

Waging War:  
Filling the Gap in Just War Theory

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## Abstract

1. Statement of the Problem. Just war theory's account of *jus in bello* is deficient. Michael Walzer, the prime representative of the prevailing view in the United States, restricts *jus in bello* to combat, war-fighting, then constructs a theory of responsibility and presents a set of principles that guide action when fighting: the principles of combatant/noncombatant distinction, proportionality, double effect and double intent, as well as the principle of due care/due risk—all of which arise amid the tension between winning and fighting well.
2. Procedures and methods. This study establishes and describes the gap in the prevailing view's treatment of *jus in bello*, then investigates alternative ways to fill that gap. Throughout, the study combines elements of moral philosophy, political philosophy, and strategic studies with historical and contemporary case illustrations of war.
3. Results. This study finds that the prevailing view is necessary but insufficient; it omits *jus in bello*'s strategic, war-waging dimension which involves a tri-partite tension: (a) setting war aims and making strategy, policy, and campaign decisions that increase the probability of being right, or at least less wrong than those one is fighting; (b) translating those decisions into action to achieve war aims at the least cost, in lives and resources, and least risk to one's political community and adapting aims, strategies, policies, and campaigns to the changing realities of war as they unfold; and (c) doing all of the foregoing while observing the war convention, sustaining the war's legitimacy in the eyes of the political community, and maintaining proper subordination of the military to civilian

leadership. In the end, waging war is about using and risking lives: lives of the citizens-who-become-soldiers, lives of the innocent, and the life of the political community. The study finds that war-waging dimension of *jus in bello* is governed by five principles which arise from the above tension: the principles of continuous dialogue, final decision authority, managerial competency, war legitimacy, and resignation.

4. Conclusions. This study concludes that a complete account of justice in the conduct of war, *jus in bello*, must include both its war-fighting and war-waging dimensions.

Defense Committee: Dr. Hilary Bok, Department of Philosophy, Johns Hopkins University; Dr. Richard Bett, Chairman, Department of Philosophy, Johns Hopkins University; Dr. Steven David, Professor and Vice Dean of Undergraduate Education, Department of Political Science, Johns Hopkins University; Dr. Steven Gross, Associate Professor of Philosophy, Johns Hopkins University; and General (Retired) Stanley McChrystal, previous Commander, International Security Assistance Force and U.S. Forces, Afghanistan and now founder and partner of the McChrystal Group.

## **Preface**

Some of the ideas in this dissertation came from my 37 years of experience in the U.S. Army where I rose to the rank of lieutenant general. I was an infantryman, a paratrooper, and a ranger. I had the privilege of commanding soldiers in a variety of units, some in active operational environments—Haiti, as a colonel; Bosnia, as a brigadier general; and Iraq, as a lieutenant general. Each assignment caused me to delve deeper into the moral dimension of using force. I was also fortunate to have received a Masters of Arts degree in Philosophy from Johns Hopkins before teaching ethics and just war theory at West Point and the theory and application of military force at the Army's School of Advanced Military Studies. These teaching opportunities provided me the time to study the moral dimension in more detail. Throughout my career, I have had great senior commanders, mentors, peers, and subordinates who shared my interest and concern for the moral aspects of our profession. Conversations and arguments with them helped shape many of the ideas in this dissertation.

Dr. Hilary Bok, my primary dissertation advisor—as well as Drs. Richard Bett, Steven David, and Eliot Cohen—continued shaping and improving my ideas through their insightful questioning, probing into my rationale, and offering challenging alternative arguments. I am grateful for their significant contributions of time and substance. I must also thank other readers of earlier drafts, friends, retired general officers, and former governmental officials, whose comments also helped me better form my arguments and ideas. Any faults in this dissertation, however, are mine alone.

The motivation to complete this dissertation came from two sources. The first is found in the soldiers that I served. These sons and daughters of America are the ones who bear the final burden of war. The costs of the war aims, strategies, policies, and military campaigns that senior political and military leaders conceive of are paid by these soldiers and their families. If this dissertation can help increase the probability that their sacrifices will be made on behalf of better thought out aims, strategies, policies, and campaign, then I will have done my duty to them. The second is found in my wife, Sharon Basso, whose encouragement and support gave me the time and space necessary to research, think, write, and edit. For this, and so many other reasons, I will always be in her debt.

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## **Introduction**

In 2011, America began its second decade at war, finding out once again that war is one of the most complex and, in many ways, most inscrutable of human activities. In conducting the wars in Afghanistan, in Iraq, and against Al Qaeda and their affiliates, the United States also relearned that war is a multi-dimensional phenomenon involving matters of the human heart, the variety of communities that humans form, and the multiple ways these communities interact. Americans have relearned too that the moral dimension of war is as much part of war's essence as are its other dimensions, for war involves life and death. Governments who conduct war necessarily use the lives of their citizens and risk the lives of innocents and sometimes even the life of their political community. Those who use and risk lives in war include both the soldiers and combat leaders on the battlefield and the senior political and military officials who send them there. Both, therefore, have *jus in bello* responsibilities; battlefield responsibilities are just more direct and apparent than are the others.

The American dialogue about its post 9/11 wars reflects war's complexity. Some of this dialogue is technical, part of America's continual fascination with machines and technology; some has been strategic, wondering about America's role in the world; and some socio-political, questioning the kind of community America is or ought to be. Some of the dialogue has resurrected the language and logic of just war theory, that portion of philosophy responsible to study war from its moral perspective. Perennial questions have arisen: "Are these wars justified?"—concerns of *jus ad bellum*; "Have we conducted these wars justly?"—matters of *jus in bello*; and "Are we ending these wars justly?"—



issues of *jus post bellum*. These are certainly important questions that deserve continued attention. Answers to these questions will emerge over time, and the arguments that precede the answers will contribute to a deeper understanding of war from the moral perspective.

At various times, the public dialogue in the United States concerning conducting its wars has focused on the Abu Ghraib prison abuses, rendition and secret prisons, interrogation techniques and torture, the difficulties in distinguishing combatants from noncombatants, crimes committed by U.S. combatants, rules of engagement applied in combat, and collateral damage caused by drones and other area-effects weapons. A discussion of behavior in combat requires an understanding the principles governing *jus in bello*. This is an important understanding, especially now, for the tools of war are changing, as are its methods. Moral philosophers have an important role in this time of change.<sup>1</sup>

This study intends to contribute to the understanding of *jus in bello*. In fact, the intent is to narrow the focus to only one aspect of one *jus in bello* issue: war-waging responsibility. This study will build upon the continuing influential work done by Michael Walzer in *Just and Unjust Wars* and other of his writings on war.<sup>2</sup> As Brian Orend points out in *The Morality of War*, “Michael Walzer’s *Just and Unjust Wars* of 1977 remains the breakthrough work of that decade, directly inspired by Vietnam. It is not much of an exaggeration to say that this work has been to current just war theory

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<sup>1</sup> Three of the more useful works concerning the changes in the tools and conduct of war are these: Rupert Smith, *The Utility of Force: The Art of War in the Modern World* (London: Penguin Books, 2006); David Kilcullen, *Out of the Mountains: The Coming of Age of the Urban Guerrilla* (New York: Oxford University Press, 2013); and General Gordon Sullivan and Colonel James M. Dubik, *Envisioning Future Warfare* (Fort Leavenworth, Kansas: U.S. Army Command and General Staff College Press, 1995)

<sup>2</sup> Michael Walzer’s *Just and Unjust Wars* (New York: Basic Books, 1977).

what Grotius' *The Law of War and Peace* was to prior centuries.”<sup>3</sup> Walzer's initial motivation to delve into just war theory was political activism, not moral philosophy. He thought that, even though there was a rich tradition in just war theory, Americans in the 1960s and 1970s were insufficiently prepared to understand and use it because of “an education which taught...[that morality] had no proper descriptive use and no objective meaning.”<sup>4</sup> So, Walzer set out to show that there is a structure—a language, and a logic—to the ways citizens, soldiers, and political leaders talk about war's moral dimension. This structure, Walzer demonstrates, is evident in the ways those responsible for the conduct of war justify and explain their actions and the ways those judging their conduct argue.<sup>5</sup> The structure of Walzer's theory provides a way to argue against both the “pacifist,” for whom force is never justified, and the “holy warrior” or “ultra realist,” for whom force is almost always justified—a way, in other words, to discuss, scrutinize, and critique the middle ground in which real life is conducted.<sup>6</sup> The power and success of Walzer's project has made his work today's prevailing view on just war theory, at least in the United States. Walzer is a much-in-demand speaker on the topic of justice in war, and *Just and Unjust Wars* has been used in America's military academies and professional military education programs as well as in many colleges, universities, and national security programs.

This study will use Walzer as a reflection of the prevailing American view of just war theory. The study will not provide a history of just war theory, for *Just and Unjust Wars*

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<sup>3</sup> Brian Orend, *The Morality of War* (Ontario, Canada: Broadview Press, 2006), p. 24.

<sup>4</sup> Michael Walzer, *Just and Unjust Wars*, op.cit., p. xi.

<sup>5</sup> Michael Walzer, *Just and Unjust Wars*, ibid., pp. xii-xiii.

<sup>6</sup> Michael Walzer, *Arguing About War* (New Haven, Connecticut: Yale University Press, 2004), pp. 3-22.

attempts to recapture and update that history.<sup>7</sup> Rather, this study will describe a gap in Walzer's treatment of *jus in bello*. Then it will suggest ways to fill that gap.

Walzer's view of *jus in bello*—the area to which this study is limited—has several components. First, it is grounded upon individual rights (life and liberty) and the communal manifestation of these rights (political sovereignty and territorial integrity) which give rise to an essential *jus in bello* tension: the tension between winning and fighting well. Second, it presents a set of principles that guide, or should guide, just conduct in war. Finally, it prescribes the responsibilities of those conducting war—soldiers, their officers, and political leaders.

The gap in Walzer's view of *jus in bello* results from overly restricting the conduct of war to fighting. Fighting, what happens in combat and as a result of combat, is the most visible aspect of war's conduct. Fighting is certainly the subject of most media reporting and the subject that comes to anyone's mind first when asked, "What is war?" The conduct of war, however, involves more than fighting. Fighting a war concerns the tactical dimension of war's conduct; waging a war concerns the conduct of war's strategic dimension.

Fighting takes place within the context of political and military strategy. In fact, individual battles, engagements, and campaigns gain their meaning only relative to the military objectives and the political war aims that they help to achieve. War aims, strategies, and the policies necessary to execute strategies, are devised and promulgated by senior political and military leaders. Further, strategies and policies must be translated

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<sup>7</sup> Michael Walzer, *Just and Unjust Wars*, op.cit., p. xiv.

into action. This translation occurs both through the military chain of command and through the machinery of civil and military bureaucracies.

Although these strategic aspects of conducting war—deciding upon war aims, strategies, policies, and military campaigns, translating those decisions into action, and adapting as the war unfolds—have a direct effect on how a war is fought, how long a war lasts, and whether the lives used and risked in that war are used well and risked appropriately, they are absent from Walzer’s account of *jus in bello*. Chapter 1 of this study will summarize Walzer’s view concerning *jus in bello* and demonstrate that, while necessary, it is insufficient as a full description of the entirety of *jus in bello* because it is limited to the tactical dimension of the conduct of war, war fighting.

Chapter 2 will describe the details of the strategic, war-waging, dimension of *jus in bello* and demonstrate that this dimension is related to the same rights used in the dominant view. The chapter will also present the initial description of the central tension inherent in waging war as tripartite: (1) set and achieve war aims and make strategy, policy, and campaign decisions that increase the probability of being right, or at least less wrong than those one is fighting; (2) translate those aims and decisions into action to achieve war aims at the least cost, in lives and resources, and least risk to one’s political community then adapt decisions and actions as the war unfolds; and, (3) do all of the foregoing while observing the war convention and maintaining legitimacy, public support of the war effort. Later chapters will complete this initial description, with the final description of the tri-partite tension presented in chapter 5. Last, chapter 2 will demonstrate that the gap in Walzer’s view of *jus in bello* requires its own set of guiding principles and theory of responsibility.

Chapters 3 and 4 will investigate two prominent theories that could be used to fill the identified gap and provide the basis for a war-waging theory of responsibility. Chapter 3 looks at a principal-agent theory of civil-military relations as expressed primarily in Peter Feaver's *Armed Servants: Agency, Oversight, and Civil-Military Relations*.<sup>8</sup> This theory highlights important aspects of how the civil and military bureaucracies of the U.S. defense establishment and their senior leaders interact with one another. Specifically, Feaver hopes to answer this question: How do civilians control the military?<sup>9</sup> Ultimately, this study will find that Feaver's approach cannot provide an adequate foundation for *jus in bello*'s war-waging responsibilities of senior political and military leaders. His approach, however, will be found useful for two reasons. First, it will require, at least in the case of the United States, that the third element of the tri-partite tension be changed to read: "do all of the foregoing while observing the war convention; maintaining legitimacy, public support of the war effort; and while maintaining civil control of the military." Second, it illuminates one aspect of what it takes to make the civil and military bureaucracy work in the conduct of a war, compliance, a subject taken up in Chapter 5.

Chapter 4 uses Eliot Cohen's unequal dialogue from *Supreme Command: Soldiers, Statesmen, and Leadership in Wartime* to continue the analysis of the strategic dimension of war's conduct and search for a way to fill the gap in Walzer's account of *jus in bello*.<sup>10</sup> Cohen highlights the necessity of a robust dialogue between senior political and military leaders, necessary because war cannot be waged properly without such a dialogue. This

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<sup>8</sup> Peter D. Feaver, *Armed Servants: Agency, Oversight, and Civil-Military Relations* (Cambridge, Massachusetts: Harvard University Press, 2003)

<sup>9</sup> Peter Feaver, *Armed Servants*, *ibid.*, p. 1.

<sup>10</sup> Eliot A. Cohen, *Supreme Command: Soldiers, Statesmen, and Leadership in Wartime* (New York: Anchor Books, 2001)

study will find that Cohen's approach is consistent with Walzer's rights-based theory; provides an adequate account of how senior leaders set and achieve war aims by making strategy, policy, and military campaign decisions that increase the probability of being right, or at least less wrong than those one is fighting; and insists upon observing the war convention and maintaining civil control of the military. Thus, Cohen's approach provides much of what is necessary to fill the identified gap and provide the basis for a theory of responsibility, but not all.

His approach will be found incomplete for three reasons. First, his description of the "unequal dialogue" does not capture the full extent of the sets of dialogues that must be conducted to wage war. Second, his discussion is incomplete in its treatment of the conditions necessary for the dialogue he describes to work. Last, he does not discuss how decisions that result from the dialogue get translated into action—an important war-waging responsibility.

Chapter 5 of this study addresses these shortcomings, analyzing the necessary conditions for the kind of dialogues necessary to wage war and discussing how decisions and actions are converted into action. Chapter 5 suggests that the set of near-continuous dialogues actually form a performance-oriented decision-and-execution regime rather than a single dialogue, and that such a regime is what is necessary to wage war. A dialogue-execution regime is necessary both prior to the initial decisions concerning war aims, strategies, policies, and military campaigns as well as through the war so to adapt to the dynamic nature of war. Once begun, war is a continuous political-military activity that requires an equally continuous civil-military dialogue-execution regime, not a discrete dialogue in which military leaders provide episodic "advice" or "input."

Episodic “advice” or “input” also conveys an overly role differentiated separateness to a dialogue-and-execution regime that, in its optimal form, is inherently both civil and military.

Chapter 6, the final chapter, completes the discussion of waging-war responsibilities, the strategic dimension of *jus in bello*, that Walzer omits. It will present five principles—the principles of continuous dialogue, final decision authority, managerial competency, legitimacy, and resignation—as those that govern *jus in bello*’s war-waging activities. The chapter will go on to describe *jus in bello* responsibilities of senior political and military leaders as positional responsibilities and present a rationale for the moral grounding of these responsibilities. Chapter 6 will also describe the sources and purposes of the five war-waging principles that govern the strategic dimension of *jus in bello*.

In the end, this study hopes to continue Walzer’s work and thus contribute to describing a more complete just war theory. Throughout, the study will use historical and contemporary illustrations to clarify and explain the ideas it presents: first about the gap in Walzer’s *jus in bello* theory, then about how to fill that gap with an adequate account of war-waging responsibilities.

Just war theory is a theory of practical morality applied in the most complex of human activities. War is the realm of ambiguity, whether for soldiers and their military leaders who are fighting it or the senior political and military leaders waging it. Decisions and action, again whether tactical or strategic, are often taken under conditions of near-extreme uncertainty. Those responsible to decide and act—from soldiers and their immediate military leaders to senior generals and political officials—often do not have

the luxury of time or anything close to “complete” information or understanding. Under fire, soldiers sometimes stare at their sergeants and lieutenants for what seems eternal seconds awaiting orders. The battlefield rarely provides the time to get more information, to reflect a bit longer, or to understand more completely. For a different set of reasons, time is often not on the side of senior political leaders and generals either. Nor do these senior leaders have the information they would like to have before making important and consequential decisions. Mistakes, misjudgments, misunderstanding are rife at both the tactical and strategic levels. In every war, learning takes place at both the tactical and strategic levels. Any practical morality, and certainly a theory of responsibility designed to explain and guide the conduct of war—whether war-fighting or war-waging—must take into consideration these actual conditions in which moral agents decide and act. Equally certain, however, is this: the difficulty of conditions may mitigate responsibility, but they do not erase it.

Moral philosophers have the luxury of time, and they have the luxury of not being responsible for deciding and acting under conditions of extreme ambiguity and with lives at stake. This study intends to take advantage of those luxuries to help those responsible for waging war as well as those responsible to evaluate war-waging decisions and actions.

American citizens expect their leaders to account for their decisions and actions. American leaders, political and military, understand this. Explanation and justification—whether before the media, in front of a Congressional committee, at a memorial service with the family of a veteran killed in combat, or among those with whom one just fought—goes with the territory of leadership. Walzer’s war-fighting principles provide



the means to explain, justify, judge, and assign moral praise or blame at *jus in bello*'s tactical level; the principles presented in chapter 6 provide similar services at *jus in bello*'s strategic level. Together, they form a more complete account of the conduct of war from the moral perspective.

## Chapter One:

### Walzer and the Prevailing View of *Jus In Bello*

This chapter summarizes Walzer's view concerning *jus in bello*. The chapter then argues that, while necessary, Walzer's view is insufficient as a full description of the entirety of *jus in bello* because it is limited to the tactical dimension of the conduct of war, war fighting. In limiting the scope of *jus in bello* to combat, this chapter demonstrates, Walzer's account omits other morally relevant aspects inherent in the conduct of war.

"The rules of war," says Michael Walzer in *Just and Unjust Wars*, "consist of two clusters of prohibitions attached to the central principle that soldiers have an equal right to kill. The first cluster specifies when and how they can kill, the second whom they can kill."<sup>11</sup> Applying these rules in battle make war distinguishable from mere atrocity, murder and massacre. Soldiers, and other combatants for that matter, remain moral agents even in combat. In fact, Walzer correctly points out that "professional soldiers remain sensitive (or some of them do) to those limits and restraints that distinguish their life's work from mere butchery....That is why...officers...will often protest commands...that would require them to violate the rules of war and turn them into mere instruments for killing."<sup>12</sup>

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<sup>11</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, p. 41. One can see a similar approach contained in "Part Three: Issues of Fighting" in Nicholas Fotion and Gerard Elfstrom's *Military Ethics: Guidelines for Peace and War* (Boston, Massachusetts: Routledge & Kegan Paul, 1986), pp.135-211; as well as "Chapter 4: *Jus in Bello* #1, Just Conduct in War" in Brian Orend, *The Morality of War*, *op.cit.*, pp.105-139.

<sup>12</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 45.

For Walzer, the central moral tension in *jus in bello* is between winning and fighting well—where “winning” is defined as achieving the military objective and “fighting well” is as applying a set of limitations placed on soldiers and their leaders who otherwise might justify doing anything that they believe is necessary to win. These limitations, which Walzer calls the War Convention, are a “set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgments” for military conduct in war.<sup>13</sup>

### **The Principles of and Inherent Tension in *Jus in Bello*.**

Walzer uses the following five principles to describe just behavior on the battlefield:

1. The principle of non-combatant immunity. This is the War Convention’s first principle. Simply put, “once war has begun, soldiers,” unless they are wounded or captured, “are subject to attack at any time.”<sup>14</sup> Civilians, non-combatants, on the other hand, are not subject to attack. *The Law of Armed Conflict* is also clear about this fundamental principle, “Combatants and civilians are the most widely recognized terms for describing the actors on the battlefield, establishing their legal status, and for providing guidance to the soldier as to who may be lawfully targeted in armed conflict, or

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<sup>13</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 44. See also, Geoffrey S. Corn, et. al., *The Law of Armed Conflict: An Operational Approach* (New York: Wolters Kluwer, Law and Business, 2012), pp. 107-413.

<sup>14</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.* p. 138.

detained on the battlefield until the threat to the force is ended or the enemy has been defeated.”<sup>15</sup> Few things in war are absolute or universally clear, however.

Even this fundamental combatant/noncombatant distinction is muddled immediately. Some combatants are legal; other, illegal. Some civilians lose, under specific circumstances, their immunity from attack; others do not.<sup>16</sup> The next three principles are designed to help guide decision and action in these morally muddy waters.

2. The principle of double effect and double intent. “Double effect is a way of reconciling the absolute prohibition against attacking civilians with the legitimate conduct of military activity.”<sup>17</sup> The principle tells soldiers and their leaders that an act of war is permitted even if it is likely to kill non-combatants, provided four conditions hold: “(a) The act is good in itself or at least indifferent, which means...that it is a legitimate act of war. (b) The direct effect is morally acceptable—the destruction of military supplies...or killing of enemy soldiers. (c) The intention of the actor is good, that is, he aims only at the acceptable effect; the evil effect is not one of his ends, nor is it a means to his ends, and aware of the evil involved, he seeks to minimize it, accepting cost to himself. (d) The good effect is sufficiently good to compensate for allowing the evil effect.”<sup>18</sup> The ambiguity inherent in this principle gives rise to the next two.

3. The principle of proportionality. Proportionality, with respect to *jus in bello*,

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<sup>15</sup> Geoffrey S. Corn, *et. al.*, *The Law of Armed Conflict*, *op.cit.*, p133.

<sup>16</sup> Geoffrey S. Corn, *et.al.*, *The Law of Armed Conflict*, *ibid.*, pp. 133-138 and 143-145; Michael Walzer, *Just and Unjust Wars*, *op.cit.*, pp. 146, 150-151; Brian Orend, *The Morality of War*, *op.cit.*, pp. 112-15.

<sup>17</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 153. Brian Orend, *The Morality of War*, *ibid.*, pp. 115-19.

<sup>18</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 153, 155. Geoffrey S. Corn, *et.al.*, *The Law of Armed Conflict*, *op.cit.*, pp. 152-52 and 161- 86.

“mandates that soldiers deploy only proportionate force against legitimate targets.”<sup>19</sup>

Walzer acknowledges that proportionality “turns out to be a hard criterion to apply, for there is no ready way to establish an independent or stable view of the values against which the destruction of war is to be measured.”<sup>20</sup> The central idea of prohibiting excessive harm, purposeless violence, and wanton destruction, however, demands that a principle of proportionality be included in the war convention.

4. The principle of due care and due risk. Soldiers may lose their right to life with respect to the enemy, but not with respect to their own leaders.<sup>21</sup> Soldiers do not want to be led by those who do not value their lives.<sup>22</sup> In the end, however, Walzer says, “if saving civilian lives means risking soldier’s lives, the risk must be accepted....War necessarily places civilians in danger; that is another aspect of its hellishness. We can only ask soldiers to minimize the dangers they impose....Exactly how far they must go...is hard to say....In fact, the degree of risk that is permissible is going to vary with the nature of the target, the urgency of the moment, the available technology, and so on. It is best...to say simply that civilians have a right that due care be taken.”<sup>23</sup>

5. The principle of supreme emergency. The limitations inherent in the war

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<sup>19</sup> Brian Orend, *The Morality of War*, op.cit., p. 118; Geoffrey S. Corn, et.al., *The Law of Armed Conflict*, *ibid.*, pp. 187-89.

<sup>20</sup> Michael Walzer, *Just and Unjust Wars*, op.cit., p. 129; Geoffrey S. Corn, et.al., *The Law of Armed Conflict*, *ibid.*, p. 191.

<sup>21</sup> James M. Dubik, “Human Rights, Command Responsibility, and Walzer’s Just War Theory,” *Philosophy and Public Affairs*, Fall 1982, Volume 11, Number 4., especially pp. 363-64; Brian Orend, *The Morality of War*, op.cit., pp. 133-36.

<sup>22</sup> Michael Walzer, *Arguing About War*, op.cit., pp. 23-25.

<sup>23</sup> Michael Walzer, *Just and Unjust Wars*, op.cit., p. 156; Brian Orend, *The Morality of War*, op.cit., p. 116.

convention, while not absolute, cannot be easily overridden.<sup>24</sup> According to Walzer, appeals to “supreme emergency” as justification for actions necessity on the battlefield are, in reality, often merely appeals to expediency. “Individuals,” Walzer says, “cannot kill other individuals [i.e. the innocent] to save themselves, but to save a nation we can violate the rights of a determinate but smaller number of people.”<sup>25</sup> Only in rare cases, which Walzer calls “supreme emergency,” can the principles of the war convention be set aside, and then only temporarily and by the political leaders representing proper authorities.

Imminence and nature of a threat, together, determine whether a supreme emergency exists. “The two criteria must both be applied. Neither one by itself is sufficient as an account of extremity.”<sup>26</sup> The imminent threat must be to a political community, not an individual, and be posed by “evil objectified in the world,” a threat—and Walzer uses Nazism as his example—to “everything decent in our lives, an ideology and practice of domination so murderous, so degrading even to those who might survive, that the consequences of its final victory were literally beyond calculation, immeasurably awful.”<sup>27</sup> Supreme emergency, however, is a conditional situation. Once either of the conditions no longer obtains, the supreme emergency is over, and the “routine” principles of the war convention once again apply.

The principles of the war convention do not resolve the tension between winning and fighting well. That tension is never resolved. Rather, the war convention reveals a

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<sup>24</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 231-32.

<sup>25</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.* p. 254.

<sup>26</sup> Micheal Walzer, *Just and Unjust Wars*, *ibid.* p. 252.

<sup>27</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 253.

fundamental characteristic of *jus in bello*: in combat, soldiers and their leaders are between a rock and a hard place.

This tension exists, according to Walzer, because soldiers lose their right to life “simply by fighting.”<sup>28</sup> Civilian non-combatants, the innocent, do not. This is a matter of class legislation.<sup>29</sup> It is the enterprise of a soldier’s class that radically distinguishes the individual soldier from the civilians he leaves behind.<sup>30</sup> A soldier is made into a “dangerous man....The actual risks he lives with may be reduced or heightened: here the notions of military necessity, and also of kindness and magnanimity, have free play. But the risks can be raised to their highest pitch without violating his rights.”<sup>31</sup> Civilian non-combatants, on the other hand, are innocent. They are not trained and prepared for fighting; they are not fighting or cannot fight.<sup>32</sup> We call them innocent because “they have done nothing, and are doing nothing, that entails the loss of their rights.”<sup>33</sup>

Walzer is quick to point out that neither the loss nor the retention of the right to life is absolute. Captured or wounded soldiers receive benevolent quarantine from their enemies.<sup>34</sup> Soldiers regain their right to life once they are removed from the class of “dangerous men.” Similarly, some civilian non-combatants may be attacked—those that are partially assimilated into the class of soldiers because they are working directly for the war effort making what soldiers need to fight.<sup>35</sup> Direct support of the war effort cannot be inferred from merely living in an enemy’s territory, nor can it be derived from

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<sup>28</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 136

<sup>29</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 42, 138, 140, and 144.

<sup>30</sup> Michel Walzer, *Just and Unjust Wars*, *ibid.*, p. 144.

<sup>31</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 145.

<sup>32</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 43.

<sup>33</sup> Michel Walzer, *Just and Unjust Wars*, *ibid.*, p. 146.

<sup>34</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 46; see also Goeffry S. Corn, *et.al.*, *The Law of Armed Conflict*, *op.cit.*, pp. 244-46 and 328-354.

<sup>35</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 145-46.

work producing what soldiers need to live. In sum, “when it is militarily necessary, workers in a tank factory can be attacked and killed, but not workers in a food processing plant.”<sup>36</sup> Further, these workers can “only be attacked in their factory (not in their homes), when they are actually engaged in activities threatening and harmful to their enemies....because they are not armed men, ready to fight.”<sup>37</sup>

Though the line between combatants and noncombatants is a fine one, drawn under pressure, and observed under conditions of ambiguity and duress, it remains plausible because it can be observed and is necessary to restrict the damage of war. Such is moral life between the rock and the hard place.

The current discussion over using drones exhibits both the enduring use of the war convention and the tension inherent in it: Is the attack being considered aimed at a legitimate target, making the attack a legitimate act of war? Is the direct effect (killing or destruction) morally acceptable? Is the strike aimed only at the acceptable effect? Does the strike use the evil effect (the death of noncombatants) as one of its means? How is the evil effect minimized? Does the good done outweigh the evil effect? Is the means used proportional to the target and circumstances? Are the noncombatants who may be killed or injured given “due care?” Have the combatants assumed “due risk?”

The war convention does not provide answers to these questions; it merely provides the boundaries within which decisions have to be made and action taken. Some of the ambiguity concerning the use of drones results from whether the fight against Al Qaeda is a war, a “souped-up” police action against international criminals, or something in

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<sup>36</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 146.

<sup>37</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 146.



between? How one answers this fundamental question matters as to the body of legal and moral precepts applicable to operations against Al Qaeda: which are legitimate targets, what is the level of force that can legitimately be applied against these targets, are Al Qaeda operatives combatants or criminals, or which operational rules apply?<sup>38</sup> Though we have been fighting Al Qaeda for over a decade, few of these fundamental issues have been resolved—legally, morally, or diplomatically. Those fighting Al Qaeda have been treading new ground, whether that ground is new because it involved a war against a non-nation state or because it is a police action that spans the globe. In neither case is this “war” governed by a set of sufficiently settled laws and conventions.

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<sup>38</sup> Tony Pfaff, “Military Ethics in Complex Contingencies,” in Don M. Snider and Lloyd J. Matthews, editors, *The Future of the Army Profession* (New York: McGraw Hill custom Publishing, 2005), pp. 409-428. Among the many books and articles discussing the use of drones and the issues—legal, moral, and prudential—are the following: Daniel Klaidman, *Kill or Capture: The War on Terror and the Soul of the Obama Presidency* (New York: Houghton Mifflin Harcourt, 2012); David El Sanger, *Confront and Conceal: Obama’s Secret Wars and Surprising Use of American Power* (New York: Crown Publishers, 2012); Daniel Byman, “Why Drones Work” and Audrey Kurth Cronin, “Why Drones Fail,” both in *Foreign Affairs*, July/August 2013, pp. 33-54; Jonathan Masters, “Targeted Killings” Council on Foreign Relations, <http://www.cfr.org/counterterrorism/targeted-killings/p9627>; Jo Becker and Scott Shane, “Secret Kill List Proves Test of Obama’s Principles and Will,” *New York Times*, May, 29, 2012; David Kretzmer, “Targeted Killing of Suspected Terrorists: Extra-judicial Executions or Legitimate means of Defence?” *The European Journal of International Law*, volume 16, number 2, <https://www.law.upenn.edu/institutes/cerl/conferences/targetedkilling/papers/KretzmerTargetedKillings.pdf> Department of Justice White Paper: Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al Qaeda or an Associated Force, leaked to NBC News and available at: [http://msnbcmedia.msn.com/i/msnbc/sections/news/020413\\_DOJ\\_White\\_Paper.pdf](http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf); Speech by Harold Hongju Koh, Legal Advisor, Department of State, March 25, 2010, available at: <http://www.state.gov/s/l/releases/remarks/139119.htm>; : Speech, President Barack Obama, May 23, 2013 available at: <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

The war convention holds that soldiers on the battlefield are neither permitted to do whatever they deem necessary to win, nor are they absolutely prohibited from harming civilian non-combatants. The moral tension within this space is theirs to deal with. Walzer sums it up this way in *Just and Unjust Wars*: “I have tried to argue...that some degree of care be taken not to harm civilians—which means, very simply, that we recognize their rights as best we can within the context of war. But what degree of care should be taken? And at what cost to the individual soldiers who are involved? The laws of war say nothing about such matters; they leave the cruelest decisions to be made by the men on the spot with reference only to their ordinary moral notions, or the military traditions of the army in which they serve.”<sup>39</sup> Brian Orend, in *The Morality of War*, agrees that “the common sense of the abstract need for balance and moderation is clearly there, but it remains very difficult to define precisely, especially under battlefield conditions.”<sup>40</sup>

Soldiers in combat sometimes must choose between “morally abominable courses of action.”<sup>41</sup> The fact of the matter is that an act in war may be both morally permissible, even morally necessary, yet also be morally abhorrent. This is part of the moral horror of war from which those who wage it cannot escape. J. Glenn Gray calls this the “ache of guilt,” resulting from the fact that “men who in private life are scrupulous about conventional justice and right are able to destroy the lives and happiness of other in war without compunction.”<sup>42</sup> We may want the world to be otherwise, and work to make it

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<sup>39</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, p. 152.

<sup>40</sup> Brian Orend, *The Morality of War*, *op.cit.*, p. 119.

<sup>41</sup> Thomas Nagel, “War and Massacre,” in Marshall Cohen, et.al., editors, *War and Moral Responsibility* (Princeton, New Jersey: Princeton University Press, 1974), pp. 23.

<sup>42</sup> J. Glenn Gray, *The Warriors: Reflection on Men in Battle* (New York: Harper Colophon Books, 1959), p. 172.

otherwise, Thomas Nagel observes in “War and Massacre,” but “it is naïve to suppose that there is a solution to every moral problem.”<sup>43</sup> The moral tension inherent in *jus in bello* is merely one manifestation of Aristotle’s insight that “precision cannot be expected in the treatment of all subjects alike....Our discussion of ethics and morality will be adequate, if it achieves clarity within the limits of the subject matter.”<sup>44</sup>

### **Theory of Responsibility.**

With the foundation for his approach to *jus in bello* laid, the inherent tension presented, and the principles described as accurately as possible, Walzer then structures an associated theory of wartime responsibility. The “assignment of responsibility,” he points out, “is the critical test for the argument for justice.”<sup>45</sup> There can be no justice in war if there are no responsible men and women. Walzer is not concerned with legal guilt, but with moral blameworthiness of individuals for their decisions and actions.<sup>46</sup>

In general, Walzer holds that political leaders have *jus ad bellum* responsibilities; soldiers and their military leaders have *jus in bello* responsibilities. The *Law of Armed Conflict* echoes this distinction by saying, “using force against another State or sovereign is a significant decision and one that requires the leader of a nation to carefully weigh many important factors,” whereas military commanders make “sure his force effectively execute military operations...in a manner that fully complies with the Law of Armed

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<sup>43</sup> Thomas Nagel, “War and Massacre,” *op.cit.*, pp. 23-4.

<sup>44</sup> Aristotle, *Nicomachean Ethics*, Martin Ostwald translator (Indianapolis, Indiana: The Bobbs-Merrill Company, Inc., 1962), p. 5.

<sup>45</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.* p. 287.

<sup>46</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 288.

Conflict.”<sup>47</sup> Walzer addresses four categories of *jus in bello* responsibility: soldiers, officers, generals, and political leaders.

Walzer’s account of soldier responsibility is the most complete and straight-forward. Soldiers are not responsible for the war itself, but for their conduct in war, for what they do.<sup>48</sup> His treatment of officer responsibility is also relatively complete, but as subsequent analysis will show, Walzer’s account falls short with respect to an officer’s responsibility to the soldiers under his care. The detailed analysis that follows will also show that his account of a general’s responsibility is deficient, as is his treatment of *jus in bello* responsibilities of political leaders. Each category is taken up in turn.

The first category of *jus in bello* responsibility concerns soldiers. Walzer recognizes that the moral dimension of a soldier’s life is complicated at the point of battle, but he believes that the *jus in bello* norms he adduces—the combatant/noncombatant distinction; principles of proportionality, double effect, double intent, and due care/due risk; and the limited nature of supreme emergency—form a suitable moral framework that addresses the tension between winning and fighting well at the individual soldier level.<sup>49</sup> These rules provide sufficient guidance in that space between utility and necessity, which may justify “too much” killing, and the rights of the innocent, which may tend toward “absolute prohibitions” against any killing.<sup>50</sup> The rules also demonstrate that soldiers are

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<sup>47</sup> Geoffrey S. Corn, *et. al.*, *The Law of Armed Conflict*, *op.cit.*, pp. 2 and 527.

<sup>48</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, pp. 38 and 40.

<sup>49</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 34-47 and 127-159.

<sup>50</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 226-7 and 304.

not mere instruments, killing machines, or automatons; rather, while they serve in war, perhaps the most morally ambiguous of human activities, they remain moral agents.<sup>51</sup>

Rights form the moral foundation of the principles governing *jus in bello*; they also play an important role in understanding the soldier's responsibility in war. "Individual rights (to life and liberty)," Walzer says, "underlie the most important judgments that we make about war....It is enough to say that they are somehow entailed by our sense of what it means to be a human being. If they are not natural, then we have invented them, but natural or invented, they are a palpable feature of our moral world."<sup>52</sup> Walzer acknowledges, however, that taking another's life in war is, under specific circumstances, justified. Therefore, his understanding of the right to life is neither absolute, nor merely the result of arbitrary conventions or utility, for then justifying taking another's life in war would be too easy. So Walzer calls these rights "something like absolute" and claims that civilian non-combatants retain their right to life; soldiers do not.<sup>53</sup> "Simply by fighting," Walzer claims, "whatever their private hopes and intentions, they [soldiers] have lost their title to life and liberty....everyone else retains his rights."<sup>54</sup> The war convention rests on a certain view of noncombatants, which holds that they are men and women with rights and that they cannot be used for some military purpose, even if it is a legitimate purpose."<sup>55</sup> Walzer understands that war necessarily places civilians in danger; that is another aspect of its hellishness. The principles of the War Convention

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<sup>51</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 306.

<sup>52</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 54.

<sup>53</sup> Elsewhere I have a more complete analysis of Walzer's use of rights in his just war theory. See: James M. Dubik, "Human Rights, Command Responsibility, and Walzer's Just War Theory, *op.cit.*, pp.354-71.

<sup>54</sup> Micheal Walzer, *Just and Unjust Wars*, *op.cit.*, p. 136.

<sup>55</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 137.

restrict the hellishness of war by demanding that soldiers and their officers minimize the danger they impose on civilians.<sup>56</sup>

The second category of Walzer's *jus in bello* theory of responsibility concerns military officers. "Being an officer is not like being a common soldier."<sup>57</sup> Officers, besides being bound by the same rules of war as are all soldiers, have additional responsibilities: they must aim at victory and attend to the needs of their soldiers as well as those of non-combatants. Officers choose where and how to fight, and they order soldiers into battle. Officers create the climate within which soldiers fight, and this climate has an important moral dimension: it either engenders restraint and discipline or it allows laxity with respect to both fighting skill and attention to principles of the War Convention.<sup>58</sup> Such laxity is morally relevant for it may result not just in a unit's inability to succeed against an enemy force but also in war crimes.<sup>59</sup> Officers are "automatically responsible" for their soldiers. They are, according to Walzer, "presumptively guilty" with respect to any massive violations of the rules of war by those under their command. The burden of proof is on them to demonstrate innocence.<sup>60</sup>

Though Walzer does not use the term, what he describes are the positional duties or special obligations of officers. These duties are morally important because they

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<sup>56</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 156.

<sup>57</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 316. See also a more recent essay entitled, "Two Kinds of Military Responsibility" in Michael Walzer, *Arguing About War* *op.cit.*, pp. 23-32; see also Geoffrey S. Corn, *et.al.*, *The Law of Armed Conflict*, *op.cit.*, pp. 526-569.

<sup>58</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 319-322. See also Geoffrey S. Corn, *et. al.*, *The Law of Armed Conflict*, *ibid.*, pp. 526-531 and 550-557.

<sup>59</sup> Three examples from our current wars that demonstrate how laxity resulted in war crimes are described in: Jim Frederick, *Black Hearts: One Platoon's Descent into Madness in Iraq's Triangle of Death* (New York, Random House, 2010); Anna Mulrine, Christian Science Monitor, October 28, 2010, "Pentagon had red flags about command climate in 'kill team' Stryker Brigade;" and Charlie Savage and Elisabeth Bumiller's January 27, 2012 NYT article covering the massacre of 24 Iraqi civilians by U.S. Marines in 2005, "Iraqi Massacre, a Light Sentence and a Question of Military Justice."

<sup>60</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, pp. 321-22.

“significantly affect the interests of others”—life, death, protection of the innocent, and protection of the political community. As such, Walzer’s account of the responsibilities of officers is consistent with other professions associated with institutions that serve a vital moral function in society and other obligations which apply “only to those who have consented, promised, or come to occupy a relevant role.”<sup>61</sup>

As with his treatment of the moral dimension of fighting in war, Walzer’s account of the moral dimension of leading<sup>62</sup> in war is relatively complete, except in his account of the rights of citizens-who-become-soldiers relative to their officers.

The issue of a person’s right to life—which, together with an individual’s right to liberty, forms the basis of the War Convention for Walzer—emerges as an important element in the discussion of an officer’s responsibility. An argument can be made as to whether a right that one has simply by being human can be “lost” as Walzer claims. But there is no argument that an important aspect of one’s right to life changes—even if not lost—when one becomes a soldier: one can be killed, justifiably. The status of “being able to be killed justifiably,” however, is a conditional status. It applies only when one is a soldier, only during a war or other forms of hostility, and only relative to the enemy being fought. A soldier cannot be killed, justifiably, by just anyone. Murder is still the appropriate term for soldiers intentionally killed by one of his or her fellow soldiers, or by a non-combatant, or, if intentional, by his or her officers. Thus a soldier’s right to life seems more durable than Walzer initially describes.

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<sup>61</sup> Alan Goldman, *The Moral Foundations of Professional Ethics* (Totawa, New Jersey: Rowan and Littlefield, 198), pp. 3-9, 290; James Fiskin, *The Limits of Obligation* (New Haven, Connecticut: Yale University Press, 1982), pp. 26-27.

<sup>62</sup> Walzer does leave out any discussion of the role of sergeants and the moral dimension of their leadership responsibilities. This omission, however, is not important, for what he says about the moral responsibilities of officers can be made to apply to sergeants as well.

Walzer seems to recognize this durability in his claim that “no one would want to be commanded in wartime by an officer who did not value the lives of his soldiers.”<sup>63</sup> He also seems to recognize the durability of this right in his claim that even in war, soldiers and their officers remain moral agents; they are never mere instruments.<sup>64</sup> Durability is also a reflection of the fact that when one becomes a soldier the state continues to exercise its responsibility to protect the rights of their citizens-who-become-soldiers through the military chain of command.<sup>65</sup>

One could take a firmer view of rights arguing that to say a person has a right to something is to say that no one can legitimately take it from that person or require that the person give it up. In this sense, soldiers have lost their right to life, for they can be asked—even ordered—by their commanding officers into situations where losing their life is at least a probability. Even in this firmer sense, soldiers losing their right to life does not mean that they lose all value in the eyes of their commanding officers or that their commanding officers should not care a great deal about preserving their lives for more than merely utilitarian reasons.

Whether a soldier’s right is merely abridged, lost only vis-à-vis the enemy, or lost all together as in the firm sense of rights, something morally significant remains, and this remainder affects Walzer’s discussion of “due risk and due care.”

Civilians have a right to due care because they are non-combatants who retain their right to life fully, and soldiers must take due risk to protect that right. “Exactly how far

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<sup>63</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, p. 155.

<sup>64</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 36, 40, 45, 306, and 311.

<sup>65</sup> I present an extended argument concerning the durability of a soldier’s right to life in: James M. Dubik, “Human Rights, Command Responsibility, and Walzer’s Just War Theory,” *op.cit.*, pp. 354-371.



they [soldiers] must go in doing that,” Walzer explains, “is hard to say....if saving civilian lives means risking soldier’s lives, the risk must be accepted. But there is a limit to the risk that we require....We can only ask soldiers to minimize the dangers they impose....The limits of risk are fixed....roughly at that point where any further risk-taking would almost certainly doom the military venture or make it so costly that it could not be repeated...[and] soldiers cannot enhance their own security at the expense of innocent men and women.”<sup>66</sup> Walzer admits that he “cannot specify the precise point at which the requirements of ‘due care’ have been met.”<sup>67</sup> The durability of a human being’s right to life provides at least part of the reason why there is a limit to “due risk” and why a precise point of “due risk and due care” is difficult.

The enduring value of the lives of citizens-who-become-soldiers is revealed in an exchange between a commanding officer and his soldiers in Iraq during the summer of 2005. U.S. special operations forces were fighting a series of battles in the Euphrates River Valley in an attempt to stem the flow of foreign fighters using the valley as an infiltration route, “ratlines” as they were called. Al Qaeda had rooted itself throughout the valley, setting up way stations and safe houses in the rural desert compounds and riverside cities connecting Syria to Baghdad. “If the black Al Qaeda flags that insurgents draped over the sides of compound walls or flew from rooftops weren’t evidence enough of how deeply entrenched Zarqawi [the leader of Al Qaeda in Iraq at the time] sympathizers were in the upper corridor [of the Euphrates],” writes General Stanley McChrystal who commanded the special operations forces during these battles, “the

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<sup>66</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, pp. 136-37, 155-57, and 305.

<sup>67</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 321.

violence that ensued when we contested these areas proved it.”<sup>68</sup> The Al Qaeda fighters had hardened their safe houses sometimes rigging walls with explosives, many began wearing suicide vests constantly—even sleeping in them, makeshift pillboxes were often constructed inside the houses. The fighting was bitter and close with whole units of foreign fighters sometimes barricading themselves in basements firing up through floors.<sup>69</sup>

Even after adapting their tactical methods to match the enemy’s preparedness, the losses among General McChrystal’s forces grew, as did the stress of months of constant close quarters combat. At one point, the General met with leaders and soldiers in a small compound in the Valley. “Listen,” he said, “this really hurts. But let me tell you what would make these [operations] hurt even more: if it is all in vain.”<sup>70</sup> He then went on to discuss the importance of their battles within the context of the larger strategy in Iraq and explaining how the nighttime raids in the Euphrates Valley were not only linked but also vital to the overall strategy in Iraq.<sup>71</sup>

Dying in vain wouldn’t matter if nothing remained of the citizen-now-soldier’s right to life or if a citizen-now-soldier’s life had no value other than as an instrument. Their lives could be used any way that their leaders see fit—utility being the only limiting factor. What General McChrystal’s comments reveal, however, is this: how a soldier’s life is used does matter. Officers are responsible to ensure that the lives they use are used for a purpose, that their sacrifices are made to achieve higher aims, and that they are not

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<sup>68</sup> General Stanley McChrystal, *My Share of the Task: A Memoir* (New York: Portfolio/Penguin, 2013), p. 183.

<sup>69</sup> General Stanley McChrystal, *My Share of the Task*, *ibid.*, p. 184.

<sup>70</sup> General Stanley McChrystal, *My Share of the Task*, *ibid.*, p. 185

<sup>71</sup> General Stanley McChrystal, *My Share of the Task*, *ibid.*, p. 186.

merely wasted. This responsibility derives from the fact that soldiers, at least American soldiers, remain citizens and the democracy for which they fight retains its obligation to provide adequate care for its citizens. Part of an officer's commission involves the responsibility to exercise this obligation. Walzer admits in 2004, that "soldiers have every right to expect...this of him [the officer] and to blame him for every sort of omission, evasion, carelessness, and recklessness that endangers their lives."<sup>72</sup> Walzer's 1977 account of a soldier's right to life in *Just and Unjust Wars*, in the end, seems to have been too absolutely stated. Something morally significant remains, and officers are responsible for attending to it.

The third category in Walzer's theory of responsibility concerns generals. Generals, according to Walzer, must be considered as a special category of officers for they "straddle the line" between those responsible for the war itself and those responsible for the conduct of war.<sup>73</sup> This claim is overstated. Some generals do straddle the line between officers and political leaders, but some do not. The distinguishing marks are often rank and position. Some generals have as little to do with "the war itself" as do common soldiers or other officers. Others have significant input into consequential decisions as to war policy. In World War II, for example, General Eisenhower certainly did straddle the line but Brigadier General Darby, who led a regiment of Rangers and was responsible solely for successful tactical operations, did not. Generals MacArthur and Ridgway straddled the line during the Korean War, but the commanding generals of the various infantry divisions who fought the war did not. The same is true of Generals Westmoreland and Abrams in Vietnam and their subordinate combat division

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<sup>72</sup> Michael Walzer, *Arguing About War*, *op.cit.*, p.24.

<sup>73</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, pp. 38-9.

commanding generals. Generals Casey and Petraeus in Iraq, and Generals McNeill, McKiernon and McChrystal in Afghanistan also straddled this line, but the generals commanding tactical troops in the various provinces of both countries did not. The distinction has moral consequences. Those generals who have significant input into consequential war-policy decisions have responsibilities different from those generals who do not.<sup>74</sup>

In some senses, Walzer seems to grasp this distinction among general officers. In his discussion of the Nuremberg Trials and of the Vietnam War, for example, he lays the responsibility for war-policy decisions not only on heads of state, but also, inner circles of advisors, those who play a major role in making or executing strategy and policy, and a nation's foreign policy elite.<sup>75</sup> Some generals may be in this inner circle, but not all generals are.

In other ways, however, drawing the line “between the war itself, for which soldiers are not responsible, and the conduct of the war, for which they are responsible.”<sup>76</sup>—a line which Walzer draws, Orend reinforces,<sup>77</sup> and *The Law of Armed Conflict* follows<sup>78</sup>—misses an important point.

Walzer uses this line to separate *jus ad bellum*, matters concerning justice of the war itself, which is the realm of political responsibility, from *jus in bello*, matters concerning justice of the conduct of war, which is the realm of military responsibility. This stark separation of responsibilities does not correspond to the realities of war. In fact, *jus in*

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<sup>74</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 292, 298, and 304.

<sup>75</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 292 and 302.

<sup>76</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 38-9.

<sup>77</sup> Brian Orend, *The Morality of War*, *op.cit.*, pp. 170-79.

<sup>78</sup> Geoffry S. Corn, *et. al.*, *The Law of Armed Conflict*, *op.cit.*, pp. 2 and 527.

*bello* responsibilities are twofold. At the tactical level, fighting war, military leaders are responsible as Walzer posits, but at the strategic level, the level at which war is waged, senior political and military leaders share responsibility. This war-waging aspect of a war's conduct is absent from Walzer's treatment of *jus in bello*.

The reality is that the conduct of war involves both of these important functions: first, waging a war—the set of strategic activities which combine war aims, strategy, policy, and major military operations and which describe the context within which some generals and political leaders cooperatively inform one another, make decisions, and act; secondly, fighting a war—combat, the tactical activities associated with what military forces do on the battlefield and which are governed by the war aims, strategies, and policies set at the higher level. Understanding that the conduct of war includes both waging a war and fighting a war demonstrates that political leaders have more *jus in bello*, conduct of war, responsibilities than Walzer admits. It also demonstrates that only some generals share in these responsibilities.

War springs from political purpose, political goals form war's aim, and violent force is an important means to attain that aim—these propositions are basic to the understanding of war.<sup>79</sup> The military and non-military means of war cannot be understood in isolation from the political purpose. Waging war is essentially a political *and* military act, therefore; it is neither solely military nor solely political—especially in democratic nations.

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<sup>79</sup> Bernard Brodie, *War and Politics* (New York: Macmillan Publishing Company, Inc., 1973), pp. 1-28; Karl von Clausewitz, *On War*, Michael Howard and Peter Peret, editors and translators (Princeton, New Jersey: Princeton University Press, 1976), pp. 75-88.

In drawing his line between war and its conduct as he does, Walzer employs the conventional view that strategy, war policy, and military operations are aligned by civilian leaders deciding to go to war while generals and other officers conduct that war. This view is too simplistic and identifies a gap in Walzer's theory of responsibility and treatment of *jus in bello*. Not recognizing that the conduct of war includes more than fighting, Walzer leaves out the mutually-related responsibilities among those senior civil and military leaders who must wage war—that is, the responsibility to figure out war aims and strategy, identify and promulgate war policies, ensure that military operations are means toward the declared aims, and make both civil and military bureaucracies work well enough that they help achieve the aims set.

The stark line that Walzer draws also results in his false belief that officers “plan and organize campaigns; they decide on strategy.”<sup>80</sup> The reality of war is that campaigns are civil-military decisions that require a robust and continual interaction between selected senior political leaders and generals. Often the decision to conduct a campaign is more a decision of civil leaders than of military. The campaigns conducted in North Africa, Italy, and Europe in World War II; the campaign to break out of the Pusan Perimeter and conduct the Inchon Landing in Korea; the air campaign against North Vietnam; and the decisions to “surge” in Iraq in 2007 and Afghanistan in 2009—all are examples of civil-military decisions where political considerations sometimes outweighed military factors. None were planned and organized merely by officers or based solely upon military factors. Campaigns commit significant resources of a nation—troops, funds, supplies and equipment, as well as political capital. Such decisions involve a select set of senior

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<sup>80</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, p. 316.

generals and political leaders and an on-going exchange of information and discussion between them.

The invasion of North Africa during World War II is a clear example of the civil-military nature of decisions concerning military campaigns. The decision to invade North Africa in 1942 was a decision that emerged from extended correspondence, dialogue, debate, and argument among four key figures—President Franklin D. Roosevelt, Prime Minister Winston Churchill, General George C. Marshall, and General Sir Alan Brooke—as well as the bureaucracies and staffs that served each. This decision, although informed and shaped by military factors, was, in the final analysis, made—and correctly so—based as much on political considerations as military.

The context of this decision is important. In 1942, the war was not going well for the allies. Western Europe was under Nazi occupation. In the Pacific, the Japanese were on the offensive. In January, the Japanese invasion of the Philippines forced the withdrawal of American forces toward Bataan. “The Japanese took the [Bataan] peninsula under siege and...cut off all help and supplies.”<sup>81</sup> On January 10<sup>th</sup>, the Japanese made their first surrender demand. Japanese success in Malaya forced the withdrawal of the British toward Singapore. The British surrendered in February. By April, American forces in the Philippines surrendered to the Japanese, and the Japanese forced the British to withdraw from Burma into India. In June of 1942, the German Army’s Africa Corps pushed British forces out of Libya and threatened Egypt. That same month, “nearly 200 German divisions invaded the Soviet Union. Within a day, German attacks had

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<sup>81</sup> Michael and Elizabeth M. Norman, *Tears in the Darkness: The Story of the Bataan Death March and its Aftermath* (New York: Farrar, Straus and Giroux, 2009), p. 4.

demolished one-quarter of the Soviet Air Forces. Within four months, the Germans had occupied 600,000 square miles of Russian soil, captured 3 million Red Army troops...and closed within sixty-five miles of Moscow.”<sup>82</sup> The Soviet Union was on the ropes.

When Germany invaded Russia, the U.S. was fighting in the Pacific but not yet in Europe. The defeats Russia suffered gave rise to a powerful movement for a ‘Second Front’” that would return the Allies to the Continent and draw German troops from the Russian front.<sup>83</sup> Great Britain, had won the air battle over its skies, but did not have the capacity to create a second front alone, nor were the conditions ripe for a successful invasion of the continent. Whether a second front would be undertaken—when, where, by whom, and under whose command—ultimately became decisions facing four key figures: President Roosevelt, Prime Minister Churchill, and Generals Marshall and Brooke.

Soon after Pearl Harbor, December 1941, the Americans and British met in Washington. The U.S. military leaders wanted to invade Europe in 1942. “We’ve got to get to Europe and fight,” wrote General Eisenhower in January of 1942,” and we’ve got to quit wasting resources all over the world—and worse—wasting time.”<sup>84</sup> The U.S. was thinking about an invasion of Europe in two phases: first, a build-up of troops and materiel in England; then, an invasion to seize Antwerp followed by a move east toward Berlin. Both the British Prime Minister and his Chiefs of Staff opposed such a course in

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<sup>82</sup> Rick Atkinson, *An Army At Dawn: The War in North Africa, 1942-1943* (New York: Henry Holt and Company, 2002), p. 8.

<sup>83</sup> Andrew Roberts, *Masters and Commanders: How Four Titans Won the War the West, 1941-1945* (New York: HarperCollins, 2009), p. 122,

<sup>84</sup> Rick Atkinson, *An Army at Dawn, An Army at Dawn: The War in North Africa, 1942-1943* (New York: Henry Holt and Company, 2002), p. 11.



1942 believing, correctly as it turned out, that a 1942 invasion of Europe would be folly. As the historian John Keegan puts it, “Churchill feared the [early] Second Front [in Europe] because it would succeed only if it was launched in such overwhelming force...that the Atlantic Wall and its defenders would be crushed by the impact; and he knew that neither the force nor the support would be available in 1942.”<sup>85</sup> After several months of active analysis, intense and sometimes acrimonious debate, above board and behind-the-scenes maneuvering, contentious re-analysis, and final argument, the four key leaders decided to delay a direct invasion of Europe in favor of an invasion and subsequent campaign in North Africa. President Roosevelt ultimately cast the deciding vote when he realized an invasion of Europe was not actually possible in 1942, but that some action was both militarily and politically necessary that year. So in mid July, active planning and preparation of forces, shipping, equipment, and supplies for an invasion of North Africa began. The invasion took place in November of 1942.<sup>86</sup> The “rationale for the President’s decision,” Williamson Murray and Allan Millett report in *A War To Be Won*, “stemmed from domestic politics. The United States had to involve its forces in combat with the Germans in 1942 or else the political pressures for a ‘Japan First’ strategy might become intolerable.”<sup>87</sup>

This individual decision took place within the context of other, even broader, strategic discussions and decisions among the four key civil-military leaders. “In March [of 1941],...after fourteen sessions in Washington over two months, American and British Planners agreed [to] the strategy that would be adopted in the event of the United States

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<sup>85</sup> John Keegan, *The Second World War* (New York: Viking Press, 1989), p. 313.

<sup>86</sup> Andrew Roberts, *Masters and Commanders, op.cit.*, pp. 223, 254-57, 260-88, 269-70, 291-99, 362-64, 561, and 587.

<sup>87</sup> Williamson Murray and Allan R. Millett, *A War To Be Won: Fighting the Second World War* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2000), p. 273.

entering the war. Germany would be defeated first, Allied interests in the Mediterranean would be maintained and the Pacific theatre would stay on the defensive until victory was secured in the West.”<sup>88</sup> Over the following years, there would be subsequent debates over exact priorities, operational and logistics, but the general outline of this strategy held throughout the war.

How to react, what overall strategy to follow, where and how to begin a counteroffensive, and what priorities to establish—all were decisions that President Roosevelt and Prime Minister Churchill had to make. All were decisions that had both domestic and international consequences. None, therefore, were solely military decisions. The fate of nations was at stake. Each political leader needed the advice of his senior military leader, Marshall and Brooke, but in the end, the responsibility for these decisions was theirs. In *Masters and Commanders*, Andrew Roberts sums it this way: “Each of the four men was strong willed, tough minded and certain he knew the best way to win the war. Yet, in order to get his strategy adopted, each needed at least two of the other three. Occasionally the politicians would side together against the soldiers, and vice versa.”<sup>89</sup> The decisions to demand unconditional surrender, to use the United States as the “industrial base,” to place the defeat of Germany ahead of Japan, and to begin with a campaign in North Africa, like so many others of World War II, exemplify final decisions that rightfully lay with political leadership. These decisions are also examples of the shared responsibilities associated with those senior civil and military leaders who contribute to decisions concerning war aims, strategies, policies, military campaigns, and non-military activities that are all means toward achieving the declared aims.

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<sup>88</sup> Andrew Roberts, *Masters and Commanders*, *op.cit.*, p. 115.

<sup>89</sup> Andrew Roberts, *Masters and Commanders*, *ibid.*, p. 48.

While final decision authority rests upon a very small group, sometimes an individual, decisions of this magnitude are preceded by detailed analysis of alternatives, feasibility studies, and reams of paper reflecting the arguments that had been conducted by numerous committees and study groups as well as subordinate organizations and staff agencies. The quality of the final decisions often reflects the quality of the preparatory work. Finally, decisions must be executed and adapted as the war unfolds. Execution and adaptation require that civil and military bureaucracies work together well enough to carry out the decisions made then alter those initial decisions, if necessary, as opportunities and obstacles arise. In a very real way, therefore, it is a set of senior political and military leaders who share responsibility for war waging decisions and actions. The reality of war is not as Walzer presents, a line “between the war itself, for which soldiers are not responsible, and the conduct of the war, for which they are responsible.”<sup>90</sup>

Further, Roosevelt, Churchill, Marshall, and Brooke, had to create new organizations and processes to prepare them for their personal dialogue and the decisions which flowed from it and facilitate execution of those decisions. Two of these organizations were the Joint Staff Mission and the Combined Chiefs of Staff. The Joint Staff Mission was located in Washington, D.C. and consisted of members of the British and US Chiefs of staff and represented the British chiefs in regular meetings with their American counterparts. In October of 1941, the Mission was staffed with about two hundred military personnel. By the end of the war, the Mission grew to no fewer than three thousand personnel. The Combined Chiefs—U.S. and British—was an instrument

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<sup>90</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, pp. 38-9.

designed to create close cooperation and direct Anglo-American strategy until the war's end.<sup>91</sup> Other combined organizations and command structures were created as requirements emerged.

General Marshall also streamlined the bureaucracy of the U.S. War. He knew that the U.S. would have to raise an army and expand the Army Air Corps. "In the early part of [1940]," for example, "the year of the German Blitzkrieg, the American army was antique enough. There were only two regular divisions in the continental United States that...could be said to be reasonable ready for combat. One was traditional [horse] cavalry...the other...infantry. Both were under VIII Corps headquarters in...Texas, to guard against trouble spilling across the Rio Grande."<sup>92</sup> He also knew that the policies of conscription, troop and industrial mobilization as well as pace and prioritization of industrial production and distribution would require changes to the non-military governmental departments and agencies and close coordination with the War Department.

Marshall's assessment was that the War Department's planning and coordinating organization had "lost track of its purpose of existence. It had become a huge, bureaucratic, red-tape-ridden operating agency. It slowed down everything."<sup>93</sup> His changes were sudden, massive, and radical. He downgraded general staff positions, eliminated chiefs of arms, subordinated formerly independent organizations to the chiefs of staff, and abolished a number of headquarters all together. In less than a week,

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<sup>91</sup> Andrew Roberts, *Masters and Commanders, op.cit.*, p. 115 and 152-53. See also Forrest C. Pogue, *George C. Marshall: Ordeal and Hope, 1939-1941* (New York: Viking, 1966), p. 283.

<sup>92</sup> Russell F. Weigley, *Eisenhower's Lieutenants: The Campaigns of France and Germany, 1944-1945* (Bloomington, Indiana: Indiana University Press, 1981), p.1.

<sup>93</sup> Forrest C. Pogue, *George C. Marshall: Ordeal and Hope, 1939-1941 op.cit.*, p. 289.

Marshall had his recommendations, but such changes had political implications and the decisions were not just his to make, so he explained them to the Secretary of War who gave his approval. A few days later the President put the changes into effect by Executive Order. “Only under the pressure of war and the shock of Pearl Harbor would it have been possible to stifle the heated protests of the officers whose authority was being eliminated or sharply curtailed. Only because he believed ruthless changes were vital to the effective waging of war did General Marshall demand the immediate adoption of a program that might otherwise have been debated for months.”<sup>94</sup>

Like the “Europe-first” strategy of World War II, the “don’t involve China” strategy of the Korean War, the “stop Communism in Southeast Asia” strategy in Vietnam, the “handover to Iraqi control” strategy of 2003-2007, and the debate over a counter-terrorist or counter-insurgency strategy in Afghanistan that started in 2008 are all examples of civil-military decisions where the military advice of a select number of senior generals played an important role, but where political considerations often outweighed or modified purely military factors. Military factors play an essential part in making these kinds of decisions, as do non-military factors. The final decisions rightfully fall to political leaders, since decisions concerning strategies and campaigns are a far cry from solely military activities. Walzer’s claim that “officers plan and execute campaigns and decide on strategy” simply does not reflect the reality of war.

In World War II, war aims and strategy, industrial capacity and priority, logistical preparedness, industrial and personnel mobilization plans, and organizational

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<sup>94</sup> Forrest C. Pogue, *George C. Marshall: Ordeal and Hope, 1939-1941* *ibid.*, p. 295. See pp. 289-301 for a complete account of the speed, severity, and completeness of Marshall’s changes.

effectiveness in execution—all fell within the realm of civil-military shared war-waging responsibility, and all had a direct effect on how the war was fought. The history of World War II shows that decisions made in these areas have consequences. They either increase or decrease the probability of success in war, increase or decrease war's duration, increase or decrease the probability that lives will be well used or wasted. None of the foregoing World War II decisions were easy, nor were they perfectly conceived and executed. All, however, were the result of continual, often heated, civil-military debate. All included reasonable alternatives. Many needed modifications to adapt to the dynamics of war. Further, all needed both military and governmental mechanisms—organizations and processes—to increase the quality of final decisions and to translate plans into action. Furthermore, all demonstrate that political leaders have more *jus in bello*, conduct of war, responsibilities than Walzer admits.

In sum, Walzer's theory of responsibility concerning generals is inadequate in several ways. First, it is factually inaccurate since conducting a war includes more than fighting and responsibilities for waging war are both civil and military—even where the final decisions are made by political leaders. Some generals are involved in decisions of strategy, campaigns, and policy; others are not. Second, it is inadequate because the resultant theory of responsibility does not recognize the on-going, mutual dialogue necessary to align war aims, strategy, policy, and military operations. Nor does Walzer's theory address the positional responsibilities of those who are, or should be, in this dialogue, responsibilities that “significantly affect the interests of others”—life, death, protection of the innocent, and protection of the political community—and result from assumption of relevant roles. Finally, Walzer's account of generals does not discuss their

part of the responsibility to translate aims, strategies, and policies into action. These inadequacies emerge again in his account of the wartime responsibilities of political leaders.

The last category in Walzer's theory of responsibility addresses political leaders. Walzer holds political leaders responsible for three major wartime decisions. First, governments decide to go to war. Whether the war is aggressive or defensive, whether a justified intervention or not, whether preventative or preemptive war—the decision to go to war is, according to Walzer, one of the burdens of political office. It reflects the basic foundation of Walzer's Legalist Paradigm.<sup>95</sup> Second, governments can be held responsible if they establish policies that result in war crimes.<sup>96</sup> Third, political leaders decide whether their states face a supreme emergency, a rare condition which would temporarily justify overriding the rules of war.<sup>97</sup> The first responsibility that Walzer presents concerns *jus ad bellum*—justifications for going to war. The second and third responsibilities concern *jus in bello*—justifications for action in war. As the World War II example above demonstrated, however, some political leaders have a wider role in the conduct of war—that is, they have war-waging responsibilities not captured in Walzer's theory because it limits *jus in bello* to the tactical level.

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<sup>95</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, pp. 58-63. The Legalist Paradigm consists of six basic propositions: (1) There exists an international society of independent states. (2) This international society has a law that establishes the rights of its members—above all, the rights of territorial integrity and political sovereignty. (3) Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act. (4) Aggression justifies two kinds of violent response: a war of self-defense by the victim and a war of law enforcement by the victim and any other international society. (5) Nothing but aggression can justify war. (6) Once the aggressor state has been militarily repulsed, it can also be punished. Walzer then goes on to describe cases of exception: varieties of justified intervention, preemptive strikes, and supreme emergency. Thus, the Legalist Paradigm is not absolute, but absent these exceptions, it holds.

<sup>96</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 19, 31, 36, 38, 59, 61-63, 74, 85-86, 91, 95, 127, 136, 231, 245, 287, 289, 290, 291, and 292.

<sup>97</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 251-268.

Generals who help shape war-waging decisions and actions associated with aligning war aims, strategy, policy, and military operations have responsibilities different from those generals who do not. Similarly, political leaders who make war-waging decisions and take action based upon these decisions have *jus in bello* responsibilities. These political leaders do not, as the conventional view Walzer employs suggests, just decide to go to war, then hand off the responsibility to conduct that war to generals. At least some subset of political leaders set war aims—the goals, or objectives which give war its purpose. They also establish strategies and policies governing the conduct of the war—strategies and policies necessary to mobilize political, economic, diplomatic, industrial, psychological, fiscal, and logistical resources necessary to achieve the war aims, conduct military operations, and execute essential, war-related non-military activities. This subset of political leaders also have responsibilities for policies that govern actions following termination of major hostilities, which sometimes include fighting—policies of occupation, temporary guardianship of a conquered nation, or other political arrangements that may result from active combat. Further, this subset of political leaders is also co-responsible for the quality of the dialogue among senior civil and military leaders that affects war’s aim as well as the strategies and policies that govern that war.

Finally, executing policies—whether those associated with *jus ad bellum*, *jus in bello*, or *just post bellum*—requires a government that is sufficiently capable of generating and orchestrating the military and non-military means available in ways that increase the probability of success. Winning—as defined by achieving the strategic aims of a war or other employment of military force a war—requires that political leaders make their governments work well enough to succeed. This responsibility is embedded in Walzer’s



claim that a state has a right to win wars it is forced to fight. When fighting against aggression, he says, “War is no longer a condition to be endured. It is a crime they can resist...and once one is fighting for purposes of this sort, it becomes terribly important to win.”<sup>98</sup> Of course a state cannot do anything to win, moral limits are spelled out in the war convention and rules of war, but inherent in the right to win are two key assumptions: first, that one has the military and non-military means to win, and second that a government has the capacity to use those means efficiently and effectively enough to win. “Lyndon Johnson and Robert McNamara failed as war leaders,” explains Eliot Cohen, “not so much because they micro-managed the war, but because they failed to manage it properly.”<sup>99</sup>

### **Conclusions: Conducting a war involves more than fighting.**

A complete understanding of the conduct of war reveals that *jus in bello* concerns more than “right conduct in the midst of battle, after the war has started.”<sup>100</sup> *Jus in bello* also has a larger, war-waging scope. A complete theory of wartime *jus in bello* moral responsibilities must include, therefore, responsibilities that senior political and military leaders have to set in place processes for cross-governmental department coordination as well as coordination among allies, ways to adjudicate conflicts in priorities, and methods to ensure departmental support for important war policies to achieve sufficient unity of effort and coherency in action throughout the war. These are responsibilities for

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<sup>98</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. 21, 110, and 129.

<sup>99</sup> Eliot Cohen, “The Unequal Dialogue,” in Peter Feaver and Richard Kohn, editors, *Soldiers and Civilians: The Civil-Military Gap and American National Security* (Cambridge, Massachusetts: MIT Press, 2001), p. 453.

<sup>100</sup> Brian Orend, *The Morality of War*, *op.cit.*, p. 105.

execution, for “where strategy usually fails is not in the formulation but in the execution.”<sup>101</sup> The standard is certainly not perfection, for every war is replete with examples of mistakes and missteps. Morality should demand, however, that there be some way to address the number and frequency of mistakes those who wage war make, to the speed or slowness at which those who wage war learn and improve—for the cost of learning is lives of the innocent as well as those of citizens-who-become-soldiers, lives for which the government remains responsible. The military leader’s responsibility not to waste soldiers’ lives or use their sacrifices in vain on the battlefield is clear. The immediacy of the battlefield provides this clarity. Less clear because of the distance from the battlefield, but no less important, is the senior political and military leader’s responsibility to get decisions concerning war aims, strategies, policies, and campaigns as “right as possible,” then execute those decisions sufficiently well and adapt as the war unfolds.

Conducting a war has dimensions that lie far beyond battlefield commanders. Success in war is an outcome, partially related to what military units do in battle, but it is equally related to civil-military relationships and organizational activities.<sup>102</sup> This chapter identified the gap in Walzer’s account of *jus in bello* and introduced the strategic, war-waging dimension of *jus in bello* as the component necessary to fill that gap. A complete understanding of *jus in bello* must include much more than “right conduct in the midst of

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<sup>101</sup> Bruce Riedell is quoted from the forward he wrote to Ambassador Newmann’s book: Ronald E. Newmann, *The Other War: Winning and Losing In Afghanistan* (Washington, D.C.: Potomac Books, Inc., 2009), p. x.

<sup>102</sup> Mackubin Tomas Owens, *US Civil-Military Relations After 9/11: Renegotiating the Civil-Military Bargain* (London: The Continuum International Publishing Group, 2011), especially Chapter 3, “The Role of the Military and Military Effectiveness.”

battle, after the war has started.”<sup>103</sup> The next chapter will describe the war-waging dimension of *jus in bello* in more detail.

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<sup>103</sup> Brian Orend, *The Morality of War*, *op.cit.*, p. 105

## Chapter Two:

### Waging War: The Missing Piece in Just War Theory

This chapter will use the American Civil War and the wars in Afghanistan and Iraq as examples of the activities and responsibilities that are essential to conducting war but that lie far beyond battlefield commanders and “right conduct in the midst of battle.” The activities and responsibilities that this chapter will illuminate are not traditional *jus in bello* responsibilities, for traditionally *jus in bello* had limited the scope of the conduct of war to fighting alone. Rather, the examples of the Civil War, the on-going war in Afghanistan, and the recent war in Iraq will reveal details concerning the responsibilities associated with the waging of war; the aspect of *just in bello* absent from Walzer’s account.

This chapter will also use both the Civil War and more current wars to identify the central tension inherent in the strategic, war-waging dimension of war’s conduct as tripartite: (1) setting and achieving war aims and making strategy, policy, and campaign decisions that increase the probability of being right, or at least less wrong than those one is fighting; (2) translating those aims and decisions into action to achieve war aims at the least cost, in lives and resources, and least risk to one’s political community then adapt decisions and actions as the war unfolds; and, (3) doing all of the foregoing while observing the war convention and maintaining legitimacy, public support of the war effort. The chapter closes with a discussion of the moral foundation of the war-waging responsibilities it identifies. That is, war-waging *jus in bello* responsibilities, emanate

from what democratic governments owe not only to the innocent and to the political community but also what they owe to the citizens whose lives they use.

### **The American Civil War and war-waging responsibilities.**

“The Civil War was the first of the modern total wars, and the American democracy was almost totally unready to fight it,” writes historian T. Harry Williams.<sup>104</sup> The same could be said of the U.S. military at the time, for “there was not an officer in the first year of the war who was capable of efficiently administering and fighting a large army.”<sup>105</sup> The outbreak of the American Civil War found President Lincoln equally unprepared for his duties as a war president. Yet, “not only Lincoln’s success or failure as president,” the Civil War historian James McPherson reminds us, “but also the very survival of the United States depended on how he performed his duties as command in chief.”<sup>106</sup> Lincoln worked hard to master his new role. What he learned in his role of war president, and the actions he and his senior political and military leaders took as a result, laid the foundation for the shared civil and military war-waging responsibilities that continue today—but that the prevailing view of *jus in bello* omits.

While Article II, Section 2 of the Constitution identifies the President as the Commander-in-Chief, the Constitution does not define the powers, responsibilities, and limitations of this role. Additionally, his role as Commander-in-Chief, as Lincoln would

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<sup>104</sup> T. Harry Williams, *Lincoln and His Generals* (New York: Alfred A. Knopf, Inc., 1952), Kindle location 99.

<sup>105</sup> T. Harry Williams, *Lincoln and His Generals*, *ibid.*, Kindle location 112.

<sup>106</sup> James M. McPherson, *Tried By War: Abraham Lincoln as Commander in Chief* (New York: Penguin Press, 2008), p. xiii.

learn, was shared with Congress. Article I, Section 8 gave Congress the power to declare war; raise, fund, and regulate the army and navy; and provide for the capture of enemy property.<sup>107</sup> Ultimately, Lincoln “performed or oversaw five wartime functions” in his capacity as Commander in Chief. McPherson describes those functions as follows:<sup>108</sup>

1. *Policy* refers to war aims—the political goals of the nation in a time of war.
2. *National Strategy* refers to mobilizing the political, economic, diplomatic, and psychological as well as military resources of the nation to achieve these war aims.
3. *Military Strategy* concerns plans for the employment of armed forces to win the war and fulfill the goals of policy.
4. *Operations* concerns the management and movement of armies in particular campaigns to carry out the purposes of military strategy.
5. *Tactics* refers to the formations and handling of an army in actual battle. (Italics in the original.)

Whether these five functions are exactly right is immaterial. They illustrate that Walzer’s theory of responsibility, derived from a belief that the conduct of war is a military matter, is inaccurate. Lincoln came to realize that the conduct of war included fighting—tactics—but it also included more—policy, national strategy, military strategy, and operations. Lincoln’s five functions make clear that conducting war cannot be solely the concern of military leaders. Correspondingly, these functions illustrate that Walzer’s account of *jus in bello* and the theory of responsibility derived from his account is necessary but insufficient.

To conduct the Civil War, the Lincoln administration had to identify its war aims. Then, together with Congress, government departments and agencies, and the military leadership, the administration had to devise a strategy to attain those aims and raise an

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<sup>107</sup> Jethro K. Lieberman, *The Enduring Constitution: A Bicentennial Perspective* (New York: West Publishing Company, 1987), pp. 452 and 455.

<sup>108</sup> James M. McPherson, *Tried By War*, *op.cit.*, p. 5.

army and navy capable of victory. A special session of Congress, held in July of 1861, eventually authorized all the emergency actions that President Lincoln had taken, including calling up troops and instituting a naval blockade of the South. In this session, Congress appropriated funds to put 500,000 soldiers in the field. The Militia Act of 1862 bolstered Union forces by allowing the President to employ persons of African descent in military and naval service. Last, the Conscription act of 1863 created the first draft in American history.

With respect to war aims, “Lincoln first established national preservation as the goal for which the North would fight, putting aside the question of slavery. In doing so, he chose the approach that plainly commanded the broadest public support....Although Lincoln made the prudent choice at the start,” Andrew Polsky says in *Elusive Victories: The American Presidency at War*, “he faced a more difficult task in reevaluating war aims as the conflict progressed.”<sup>109</sup> By 1862, sediments had changed and the war had evolved into a nation-rending struggle that few had anticipated. An August, 1862 letter that Senator John Sherman wrote to his brother General William T. Sherman said as much: “A year ago men might have faltered at the thought of proceeding to this extremity [but now] they are in great measure prepared for it.”<sup>110</sup> Emancipation became a “military necessity...to the preservation of the Union.”<sup>111</sup> War aims changed when the Emancipation Proclamation went into effect in 1863.

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<sup>109</sup> Andrew J. Polsky, *Elusive Victories: The American Presidency at War* (New York: Oxford University Press, 2012), pp. 35 and 36.

<sup>110</sup> Quoted in James M. McPherson, *Tried by War, op.cit.*, p107.

<sup>111</sup> James M. McPherson, *Tried by War, ibid.* p. 108.

War costs money. As gold and silver coin became increasingly scarce; the government's ability to finance the war was at risk. In addition to loans,<sup>112</sup> and again working with Congress, the Lincoln administration used the Legal Tender Act to create paper money. The act also established the Internal Revenue Bureau in the Department of Treasury and levied a federal income tax for the first time in American history.<sup>113</sup>

War involves diplomacy. One of the main diplomatic efforts during the Civil war was designed to keep European powers from recognizing the South. The Confederate States tried to withhold cotton as an economic weapon. As one Southern newspaper wrote, "keep every bale of cotton on the plantation. Don't send a thread to New Orleans or Memphis till England and France have recognized the Confederacy."<sup>114</sup> To counter this threat, one that would certainly have prolonged the war, the Union executed both a naval strategy of blockade and a diplomatic engagement strategy in London and Paris. British and French officials "exchanged worried views about the probable impact of a cotton famine. Textile magnates in Lancashire and Lyons talked of shutdowns....British and French diplomats discussed the possibility of joint action to lift the blockade."<sup>115</sup> Ultimately, "history would later give Secretary of State [William H.] Seward high marks for his role in preventing Britain and France from intervening in the war."<sup>116</sup>

War requires managerial capacity. The sheer scale of the Civil War was beyond any previous U.S. military or political experience. Initial management efforts simply failed.

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<sup>112</sup> James M. McPherson, *Battle Cry of Freedom, The Civil War Era* (New York: Oxford University Press, 1988), p. 443.

<sup>113</sup> Doris Kerns Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* (New York: Simon & Schuster, 2005), pp. 348, 365-67, 461-62, and 536-37.

<sup>114</sup> James M. McPherson, *Battle Cry of Freedom, op.cit.*, p. 383.

<sup>115</sup> James M. McPherson, *Battle Cry of Freedom, ibid.*, p. 384. See also pages 382-391.

<sup>116</sup> Doris Kearns Goodwin, *Team of Rivals, op.cit.*, p. 364.



Secretary of War Edwin M. Stanton came to realize that to wage a war as massive as the one he faced, “everything had to be done systematically and in order.”<sup>117</sup> As if a harbinger of what President Roosevelt, Secretary of War Stimson, and General Marshall faced in World War II, some of the most important innovations of the Civil War concerned “more efficient techniques, procedures, and methods” to manage personnel and logistics and execute strategy.<sup>118</sup>

Secretary Stanton and his quartermaster general, Montgomery Meigs, put in place a number of new organizations and management procedures, for example the War Board created to help manage the broad undertaking demanded of the Civil War. Though an informal body, not functioning as a source of command, the War Board ultimately created sufficient unity of effort that facilitated logistics; coordinated rail, water, and road transport as well as telegraph and industrial actions; and recommended priorities and strategy. In establishing this board and running it as he did, Secretary Stanton strengthened the administration of the Union war effort.

After he established the Board, Secretary Stanton “gathered together the heads of several bureaus of the army ‘to effect an informal organization for his own instruction, and in order...to bring to bear the whole power of the Government’ upon the operations involved in the Civil War. This gathering included the adjutant general, the quartermaster general, the chief engineer, the commissary general. The War Board and its informal committee of bureau heads facilitated control and coordination in operations, often prescribing the strategy of particular campaigns. Following suit, President

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<sup>117</sup> Herman Hattaway and Archer Jones, *How the North Won: A Military History of the Civil War*, (Chicago, Illinois: University of Illinois Press, 1983), p. 138.

<sup>118</sup> Herman Hattaway and Archer Jones, *How the North Won*, *ibid.*, p. 138.

Lincoln's Secretary of the Navy created several boards—The Navy Board, The Board of Strategy, and the Ironclad Board—to orchestrate the actions of the navy, government, and private industry.<sup>119</sup>

None of these managerial innovations worked immediately, and none worked perfectly. They did, however, contribute significantly to translating aims, strategies, and policy into action, and they helped the civil and military bureaucracies adapt to both opportunities and obstacles that emerged over time. Thus, they helped make Lincoln's government work "well enough" toward his common goal—that is, at least better than the Confederate government. In sum, as historian James McPerson wrote, "The Union developed the superior managerial talent to mobilize and organize the North's greater resources for victory in the modern industrialized conflict that the Civil War became."<sup>120</sup> In *How the North Won*, Herman Hattaway and Archer Jones agree. Effective civil and military leadership, efficient civil and military staffs, and innovative management of both the military and civil dimensions of the overall war effort as well were all keys to Lincoln's success.<sup>121</sup>

War, at least when waged by a democracy, requires legitimacy. Lincoln understood that to attain his war aims, his decisions concerning strategy and military operations had to be made with "a keen awareness of their political implications."<sup>122</sup> Lincoln had to come to grips with maintain the war's legitimacy among a variety of political factions, competing views, geographic regions, and ethnic constituencies.<sup>123</sup> For example,

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<sup>119</sup> Herman Hattaway and Archer Jones, *How the North Won*, *ibid.*, pp. 119-124 and 127-150.

<sup>120</sup> James M. McPerson, *Battle Cry of Freedom*, *op.cit.*, p. 857.

<sup>121</sup> Herman Hattaway and Archer Jones, *How the North Won*, *op.cit.*, pp. 101-152.

<sup>122</sup> Andrew J. Polsky, *Elusive Victories*, *op.cit.*, p. 60.

<sup>123</sup> Andrew J. Polsky, *Elusive Victories*, *ibid.*, p. 42.

“Lincoln appointed ‘political generals’ whose chief recommendation was their prominence as politicians or as leaders of...ethnic communities. The rationale...was...to mobilize maximum support and recruitment for the war.”<sup>124</sup> Of course some of the political generals’ inability to command caused problems, but recognizing the strategic value of their service to generate and sustain popular support for the war, the President found ways to work around these problems.

Sustaining public support was a “daunting challenge in the face of heavy losses and battlefield setbacks. Morale slumped in the wake of defeats.”<sup>125</sup> Following the 1861 Union defeat in the Battle of First Manassas came the failure of General McClellan’s Peninsula campaign that started in May of 1862 and ended with a Confederate victory in the Battle of Seven Days. Then came Jackson’s success in his Shenandoah Valley Campaign and the defeats in the Battle of Second Manassas in August of 1862 and Fredericksburg in December of 1862. All were shocks to the North’s resolve. The North’s success at Antietam in September of 1862 helped dissuade the French and British from recognizing the Confederacy, and thus provided some hope to the Lincoln administration.<sup>126</sup>

The battle of Antietam and Grant’s initial progress along the Tennessee, Cumberland, and Mississippi Rivers were also bright spots in an otherwise dim year of fighting. In general, 1862 brought high casualties and little progress toward success. High casualties and the lack of progress put the legitimacy of the war at risk. In fact, part of the rationale for the 1862 Emancipation Proclamation was to bolster support for the war. The twin

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<sup>124</sup> James M. McPherson, *Tried by War, op.cit.*, p. 42.

<sup>125</sup> Andrew J. Polsky, *Elusive Victories, op.cit.*, p. 60.

<sup>126</sup> James M. McPherson, *Tried by War, op.cit.*, p. 127.

Confederate defeats in the Summer of 1863 at Vicksburg and Gettysburg, and the beginning of the final set of campaigns that began in the Spring of 1864, increased Northern support for the war. Even then, however, President Lincoln had to attend to the relationship between support for the war, casualties, and progress. Union troops, fresh from the Gettysburg battlefield for example, had to rush to New York City to help quell draft riots in July of 1863.

Lincoln's reelection was in doubt following the 1864 Spring and Summer battles of the Wilderness, Spotsylvania, and Cold Harbor where Union casualties were very high. During three months in the summer of 1864, for example, over 65,000 Union soldiers were killed, wounded, or missing-in-action—there had been 108,000 Union casualties in the first three years of the war.<sup>127</sup> The issue of support of war in the face of such losses became an open question. “A Union general home on sick leave found ‘great discouragement over the North, great reluctance to recruiting, [and] strong disposition for peace....Financial markets were pessimistic...[and] Democrats began to denounce Grant as a ‘butcher.’”<sup>128</sup> Later in 1864 when Richmond was under siege, Lee's army was nearly surrounded, and Sherman's march to the sea was in progress, progress toward ultimate victory was in sight. The President was reelected and support for the war was never again a major issue.

At the start of the war, President Lincoln deferred to General Winfield Scott, hero of both the War of 1812 and the Mexican War. Quickly, he found Scott wanting and replaced him with General George B. McClellan. Lincoln also deferred initially to

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<sup>127</sup> “The Election of 1864,” <http://www.ushistory.org/us/34e.asp>.

<sup>128</sup> James M. McPerson, *Battle Cry of Freedom*, *op.cit.*, p. 742.

McClellan, with disappointing results. Deference was perhaps the natural result of the President acknowledging his own inadequate understanding of what it took to wage war and in light of the experiences his generals had, or appeared to have had. In short order, the President learned—especially in the dark days of 1862—that he could not merely “hand over” the war to his generals. In fact it was early that year, in January of 1862, that President Lincoln came to believe that the best approach to Union military success was by simultaneous advances throughout all the theaters of the war.<sup>129</sup> The results of 1862 only confirmed Lincoln’s belief: battles and campaigns had to be means toward achieving his administration’s political ends. Further, battles and campaigns had political costs. Thus he learned that, neither policy nor national strategy could be separated from military strategy, operations, and tactics.<sup>130</sup>

In finding a general who was capable of executing his simultaneous-advances strategy, Lincoln was sequentially let down by Generals Henry W. Halleck, Don Carlos Buell, John Pope, Ambrose E. Burnside, Joseph Hooker, and William Rosencrans, but he never deferred again.<sup>131</sup> Even after the President “discovered” General Ulysses S. Grant, a commander who was capable of executing his “simultaneous advance strategy” and in whom the President could place significant trust and responsibility never to be disappointed, Lincoln kept his hand on the pulse of military strategy and operations.<sup>132</sup> He visited the front often, as he did military hospitals; he received reports from his own “agents” in military commands—like Charles Dana placed in General Grant’s headquarters; and he corresponded with his commanders frequently by letter and

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<sup>129</sup> Herman Hattaway and Archer Jones, *How the North Won*, *op.cit.*, pp. 143-44.

<sup>130</sup> James M. McPherson, *Tried by War*, *op.cit.*, p. 6.

<sup>131</sup> James M. McPherson, *Tried by War*, *ibid.* p. 8.

<sup>132</sup> James M. McPherson, *Tried by War*, *ibid.*, pp. 1-8.

telegraph. Monitoring execution became part of President Lincoln's repertoire of leadership behavior.

President Lincoln's personal leadership behavior, the managerial and organizational innovations of his secretaries; his work with Congress; his discussion with senior military commanders and staff officers; and the mechanisms he put in place to ensure he benefitted from a robust dialogue that included asking "hard questions about the assumptions behind strategy, whether war goals were appropriate and can be achieved, how much progress has been made, and more"<sup>133</sup>—all demonstrate two essential elements in the war-waging dimensions of conducting war: creating a cooperative civil-military effort in order to devise appropriate war aims, adequate policy, and proper strategies and an equally cooperative and important effort to execute that policy and strategy is executed and adapt as the war unfolds. Without both, his aim to preserve the Union would not have been achieved and the lives and resources used in waging that war would have been wasted. The President did not come to office fully understanding what it meant to conduct war, but the reality of being a war president taught him quickly that conducting a war involves more than fighting; it also involves waging war, and this second dimension of conducting war is an inherently civil-military responsibility.

Conducting war, Lincoln, his cabinet, and his generals found, is both a complex and serious endeavor. Complexity reemerges from several areas. Wartime success requires constant balancing and rebalancing war ends, strategies, and policies with the use of military forces on the battlefield. It is also complex because in war few things are static, opportunities come and go, the enemy actively attempts to foil plans, obstacles arise, and

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<sup>133</sup> Andrew J. Polsky, *Elusive Victories*, *op.cit.*, p. 80.

domestic and international situations that affect the various strategies required in war ebb and flow. Lincoln also found that the need to sustain legitimacy of the war in the eyes of the public required having the right war aims and making progress toward those aims, another dimension of war's complexity. Last, war's complexity is seen in nature of making decisions and taking action. While President Lincoln may have been the final decider, he could neither figure out the "Rubik's Cube" of war nor supervise the execution of war alone. *Elusive Victories* reminds the reader that "no president leads alone in wartime, and Lincoln's effectiveness depended a great deal on others."<sup>134</sup> Decision and action in war demand for a constant civil-military dialogue and constant coordination between civil and military bureaucracies. Constructing a set of sufficiently coherent strategies is one thing, executing those strategies and adapting them as conditions change is quite another. In both, President Lincoln required civil and military organizations and processes to help decide and execute. Lincoln knew how to control the processes that surrounded him, and he knew how to lead. He emerged, as Doris Kerns Goodwin says, not only the commander-in-chief, but also "the captain of [a] most unusual cabinet."<sup>135</sup>

President Lincoln also learned, as succeeding Presidents would, that war is a serious affair because life and death are inherently involved—not just of enemy combatants; but also of the American citizens-who-become-soldiers; of the innocent, friendly and enemy; and sometimes of political communities. As the President said at Gettysburg, "It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of

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<sup>134</sup> Andrew J. Polsky, *Elusive Victories*, *ibid.*, p. 79.

<sup>135</sup> Doris Kerns Goodwin, *Team of Rivals*, *op.cit.*, pp. xvi-xvii.

devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people shall not perish from the earth.”<sup>136</sup>

Poor war aims, strategies, and policies; badly thought-through campaigns and major operations; and inefficient and ineffective civil-military dialogue and execution can join to prolong a war unnecessarily, decreasing the probability of success and, thereby, increasing the probability of risking the lives of the innocent and the life of the political community unnecessarily as well as wasting the lives soldiers and national treasure on a scale much larger than that of fighting itself. When a soldier errs, the cost in lives may be counted in the dozens. When a commanding general errs, that count may extend to the thousands—even tens of thousands as in the case of several Civil War battles. When senior political and military leaders get war aims, strategies, and policies wrong or decide upon those that cannot be executed by the associated military and civil bureaucracies with sufficient effectiveness, the fiscal price and human costs—individual and communal—can be staggering.

For Walzer, the conduct of war is governed by principles that emerge from the tension between winning and fighting well, the two competing responsibilities of soldiers and their military leaders. These principles, and the tension from which they flow, govern moral behavior while fighting and describe the tactical aspect of *jus in bello*. They are a necessary part of just war theory, but alone they are not sufficient. Right conduct in war also has a strategic dimension, the war-waging responsibilities described in the Civil War

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<sup>136</sup> Don E. Fehrenbacher, editor, *Lincoln: Speeches and Writings, 1859-1865* (New York: The Library of America, 1989), p. 536.



case. In this dimension, Walzer's theory of responsibility is deficient. He holds that political leaders are responsible for the war itself—matters of *jus ad bellum*; military leaders, on the other hand, are responsible for the conduct of war—matters of *jus in bello*. President Lincoln would find this distinction not just unhelpful but also factually incorrect. The moral issues associated with the strategic dimension of *jus in bello*, Lincoln, his cabinet, and his generals would find, result from a tension among three competing responsibilities associated with senior political and military leadership. First, set and achieve war aims by making strategy, policy, and military campaign decisions that increase the probability of being right, or at least less wrong than those one is fighting. Second, translate those decisions into action to achieve war aims at the least cost, in lives and resources, and least risk to one's political community then adapt decisions and actions as the war unfolds. Third, do all of the foregoing while observing the war convention and maintaining legitimacy, public support of the war effort.

In sum, Lincoln came to understand conducting war in a broad and complete sense. From the moral dimension, his understanding reveals that a complete account of justice in war must include both the war-fighting and war-waging dimensions of war's conduct. He also came to realize that, because of the dynamic interrelationship among his five functions, conducting war required iterative decisions, a sustained civil-military dialogue, and continual coordination and cooperation among the civil and military bureaucracies. Walzer's view of *jus in bello* captures little, if any, of the war-waging responsibilities Lincoln came to understand.

Lincoln's war lessons remain valid today. Many of the lessons Lincoln learned as he, his cabinet, and his generals waged the Civil War were initially ignored in America's

post 9/11 wars. Some came to be re-learned; other, not. Learned or not, the wars in Afghanistan and Iraq confirm that the war-waging functions which emerged during the Civil War and tri-partite tension inherent in waging war remain operant.

### **Beyond the Civil War: Waging war in Afghanistan and Iraq.**

On October 7, 2001, twenty-six days following the September 11, 2001 attack of New York and Washington, D.C., the United States invaded Afghanistan where the 9/11 attacks were planned and launched. When the Taliban rulers of Afghanistan refused to extradite Osama bin Laden and the rest of the Al Qaeda planners, the United States was forced to go to war. President George W. Bush, in his words, “felt the gravity of this decision. I knew the war would bring death and sorrow. Every life lost would devastate a family forever....My anxiety about the sacrifice was mitigated by the urgency of the cause. Removing al Qaeda’s safe haven in Afghanistan was essential to protecting the American people....We were acting out of necessity and self-defense, not revenge.”<sup>137</sup> In sum, the President concluded that going to war was justified and worth the cost in lives and treasure. The country—in fact, the world—was in support.

At the start of the war, President Bush deferred to his generals. Again in his words, “I did not try to manage the logistics or the tactical decisions. My instinct was to trust the judgment of the military leadership.”<sup>138</sup> In relatively quick order, the Taliban was routed. By the fall of 2002, the North Atlantic Treaty Organization (NATO) assumed partial responsibility for the International Security Assistance Force (ISAF), but they would not

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<sup>137</sup> George W. Bush, *Decision Points* (New York: Crown Publishers, 2010), p. 184.

<sup>138</sup> George W. Bush, *Decision Points*, *ibid.*, p. 195.

assume full responsibility until October 2006. In the interim, three strategic decisions began to erode initial success, prolong the war, and set the conditions for the return of the Taliban.

The first decision was to allow execution to precede planning and preparation. The President, in his speech delivered to a joint session of Congress on September 20, 2001, said this would be a war to punish and bring to justice those who attacked the United States, a war “against a radical network of terrorists and every government that supports them...a war on terror...that will not end until every terrorist group of global reach has been found, stopped and defeated.”<sup>139</sup> The President corroborated the expansive nature of the war aims in his memoir, *Decision Points*, “removing Al Qaeda’s safe haven in Afghanistan....destroy the Al Qaeda network....help the Afghan people liberate themselves....bring these people [Al Qaeda] to justice....change the impression that, in the words of Bin laden, Americans were paper tigers.”<sup>140</sup> Thinking through the political, diplomatic, fiscal, organizational, and material resources necessary to achieve these war aims is not a trivial task.

Yet the speed at which the United States invaded Afghanistan meant not only that resources and means were not fully aligned with aims, but also that the aims themselves may not have been fully vetted and debated. Further, the execution plan, to say the least, was far from fully developed. Without doubt, the scale of Al Qaeda’s attack on the U.S.

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<sup>139</sup> Text: President Bush Addresses the Nation, eMediaMillWorks, Thursday, September 20, 2001. Available at [http://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress\\_092001.html](http://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress_092001.html).

<sup>140</sup> George W. Bush, *Decision Points*, *op.cit.*, pp. 184-191.

and the resultant death and destruction not only caught America and the world by surprise, but also justified an immediate response. The Bush administration was under tremendous pressure to respond, and was justified in doing so. The President could not allow those who attacked the United States an opportunity to do so again. Haste, however, resulted in insufficient intellectual, strategic, organizational, and logistic preparation, and this haste affected the conduct of the war in Afghanistan from the very start. The items on Lincoln's list—policy, national strategy, military strategy, operations, and tactics—were far from sufficiently aligned as the first U.S. forces landed in Afghanistan.

For example, even as the battle raged, Bob Woodward observed in *Bush at War* that Secretary of Defense Donald Rumsfeld believed that the Central Intelligence Agency was in charge of the offensive to remove the Taliban, while the CIA believed it was a military operation.<sup>141</sup> In his memoir, *Known and Unknown*, Secretary Rumsfeld presented a different picture, one of a prearranged shift in overall command and control. “The CIA,” he wrote, “would have the lead initially, since its personnel would be in Afghanistan first. Command would shift to Franks [General Tommy Franks, Commander of U.S. Central Command]...as the campaign took on more of a military character.”<sup>142</sup> This arrangement was to provide flexibility and cooperation without creating confused lines of command. Shifts in command within an agency, let alone between agencies and during active combat are inherently complex, and there is little evidence that the details of this shift were sufficiently coordinated. Ultimately, the mix of CIA operatives, special operations forces, massive air power, and Afghan militias proved to be sufficient to rout the Taliban.

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<sup>141</sup> Bob Woodward, *Bush at War* (New York: Simon & Schuster, 2002), pp.242-244.

<sup>142</sup> Donald Rumsfeld, *Known and Unknown, A Memoir* (New York: Sentinel, 2001), p. 375.

This mix of forces, however, was hugely insufficient to remove al Qaeda's safe haven in Afghanistan, destroy the Al Qaeda network, bring them to justice—war aims the President identified—or to deal with a post-Taliban Afghanistan. Shortly after the Taliban was routed, the inadequacies of planning and policy became clearer. The deficiencies in numbers and types of troops, confused command and control organizations, overly compartmentalized intelligence and planning arrangements, and piecemeal method of unit deployments—all contributed to the Taliban's and al Qaeda's escape into Pakistan, thus prolonging the war.<sup>143</sup>

The second decision was to take a “lead nation approach” to the rebuilding of Afghanistan. This approach resulted in Germany being responsible for training the Afghan national police; the United States, for training the Afghan Army; Great Britain, for the counter-narcotics mission; Italy, for the reform of the justice system; and Japan, for the disarmament and demobilization of the Afghan warlords and militias. In addition, the United States continued combat operations against the remnants of Al Qaeda and the Taliban—independent from the NATO effort. Unity of purpose and cohesion of action was lost almost immediately, and stayed diffused for years. Further, many of the allied nations agreed to their tasks under the assumption that they would operate in a post-hostility environment, akin to the peacekeeping mission in Bosnia and Kosovo. They quickly found that this was not the case, so their efforts were, to say it kindly, seriously impaired.

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<sup>143</sup> Sean Naylor, *Not a Good Day to Die: Chaos and Courage in the Mountains of Afghanistan, the Untold Story of Operation Anaconda* (New York: Berkley Books, 2005), pp. 10-11, 13-14, 18-19, 20, 24, 43, 48, 53, 56, 87-88, 122-133, 135-137, 149-150, 154-157, 172-174, and 271-272.

Haste was at least partially responsible for not using the Roosevelt-Churchill-Marshall-Brooke model of carefully building of organizations and processes that were necessary to wage a global war. Over the years of World War II, these organizations and processes improved, but they began to emerge very early in 1941—months prior to the Japanese attack on Pearl Harbor in December of that year. Lincoln, his cabinet, and his generals also required a period of learning. But, by 1864, when Lincoln promoted Grant to lieutenant general, the administration's decision making and execution methodologies were sufficiently mature, effective, and efficient.

It was 2006, however, five years after the initial invasion of Afghanistan, before the President realized that the approach in Afghanistan had to change. “The multilateral approach to rebuilding...was failing,” wrote President Bush, “there was little coordination between countries, and no one devoted enough resources to the effort....The multilateral mission proved a disappointment as well....The result was a disorganized and ineffective force with troops fighting by different rules and many not fighting at all.”<sup>144</sup> Not only were too few troops allocated to the task, but also, as the President concluded, “Our government was not prepared for nation building.”<sup>145</sup> Meanwhile, the Taliban began to return, casualties among both combatants and non-combatants mounted, the war dragged on, and public support became an issue.

Writing about this period, Ronald E. Neumann, the U.S. Ambassador to Afghanistan from 2005-2007, says “The public has little understanding of any aspect of the [Afghan] conflict other than the military engagement, most at the tactical level, which makes for

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<sup>144</sup> George W. Bush, *Decision Points*, *op.cit.*, p. 211.

<sup>145</sup> George W. Bush, *Decision Points*, *ibid.*, p. 220.

compelling stories but offers a limited view of a larger picture.” He continues, “As I worked through the fourth war that I have experienced up close, I was struck by how little either the public or senior policy makers understood the complex business of implementing policy....Divorcing high-level policymaking from implementation leads us to ignore information from the ground level necessary to make policies work and prevents us from learning how to adjust policies when they do not....Incomprehension of the complexity of implementation makes finding the proper balance between policy and operations difficult.”<sup>146</sup>

Dov Zakheim—one of the original members of a group of eight who advised George W. Bush on foreign and national security policy issues who became, in 2002, the U.S. Department of Defense (DoD) civilian coordinator for defense activities in Afghanistan, a position that he held simultaneously with comptroller and chief financial officer at the Pentagon—reinforces Ambassador Newmann’s perspective. “In the case of Afghanistan...through sins of both commission and omission, the Bush administration was often incapable of effectively implementing manifestly good policies, sound ideas, and wisely chosen goals.”<sup>147</sup> Zakheim continues, “The U.S. government did not engage, anywhere in any of its various departments and agencies, in extensive planning from a post-Taliban Afghanistan....The assumption was that the international community would pick up the pieces after the Taliban regime was displaced....For several years...especially in Afghanistan, there was no functional system of governance in Washington to support [those executing civil and military operations in the theater]....the reason is that, in the

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<sup>146</sup> Ronald E. Newmann, *The Other War: Winning and Losing In Afghanistan*, op.cit., pp.xi-xii.

<sup>147</sup> Dov S. Zakheim, *A Vulcan’s Tale: How the Bush Administration Mismanaged the Reconstruction of Afghanistan* (Washington, D.C.: Brookings Institution Press, 2011), Kindle location 61.

absence of standard government procedures and institutions to implement [wartime] policy, no one understood the importance of devising such procedures beforehand.”<sup>148</sup> Securing funding necessary to conduct the war, mobilizing the U.S. military’s reserves, and securing allied troop and monetary contributions “turned out to be more complicated and frustrating than it might, or should, have been.”<sup>149</sup> Even determining the size of the ground forces the nation would need to fight in Afghanistan, in Iraq, as well as in the global war against Al Qaeda, was a matter more of contention than consensus.<sup>150</sup> With regard to funding, for example, the Office of Management and Budget, the Department of State, and the Department of Defense were more competitors and obstacles to each other than cooperative agencies in pursuit of a common wartime goal.<sup>151</sup>

Zakheim goes on to explain that the U.S. government’s “neglect of Afghanistan,” a neglect which Ambassador Newmann’s *The Other War* documents as well, “allowed the Taliban to gradually seize control of key areas of the country, particularly in the country’s southern and eastern provinces.”<sup>152</sup>

The third decision that began to erode initial success thus setting the conditions for the return of the Taliban and prolonging the war in Afghanistan, was to invade Iraq. The invasion caused U.S. attention to wander from Afghanistan according to Bruce Reidel, former CIA analyst, White House counter terrorist specialist, and Brookings Institute

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<sup>148</sup> Dov S. Zakheim, *A Vulcan’s Tale*, *ibid.* pp. Kindle locations 96 and 126.

<sup>149</sup> Dov S. Zakheim, *A Vulcan’s Tale*, *ibid.* pp. Kindle locations 1210-1411.

<sup>150</sup> Dov S. Zakheim, *A Vulcan’s Tale*, *ibid.* pp. Kindle locations 1912-1936.

<sup>151</sup> Dov S. Zakheim, *A Vulcan’s Tale*, *ibid.* pp. Kindle locations 1782-1819 and 1888.

<sup>152</sup> Dov S. Zakheim, *A Vulcan’s Tale*, *ibid.* pp. Kindle location 548.



fellow. The result: the effort to rebuild Afghanistan stalled and the Taliban regrouped in Pakistan and staged a comeback.<sup>153</sup>

The invasion of Iraq is relevant to understanding the broader scope of *jus in bello* independent of how the invasion affected the war in Afghanistan. Setting aside the decision to invade Iraq—for historians, strategists, lawyers, and moral philosophers will be arguing the wisdom or necessity of that decision for decades—the invasion and its subsequent operations shows how strategy and policy affected the fighting of the Iraq War and how conducting a war involves both war-fighting and war-waging activities.

On March 19, 2003, President Bush ordered Operation Iraqi Freedom to begin. On April 9, Baghdad was close to falling into coalition hands, and on May 1, the President gave his speech aboard the *USS Abraham Lincoln* under the “Mission Accomplished” banner. The initial invasion and immediate aftermath in Iraq looked eerily similar to what was done in Afghanistan.

The Iraqi regime fell as quickly as did the Taliban in Afghanistan. Then a new reality emerged. The security vacuum in Iraq—fueled by years of oppression under the Saddam regime as well as insufficient numbers of coalition forces, the destruction of the Iraqi army, and the collapse of the police—resulted in looters carrying artifacts out of Iraq’s national museum as well as pillaging many of Iraq’s ministries, kidnappings, and murders.

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<sup>153</sup> Bruce Riedell is quoted from the forward he wrote to Ambassador Newmann’s book: Ronald E. Newmann, *The Other War: Winning and Losing In Afghanistan*, *op.cit.* pp. vii-x. See also Rajiv Chandrasekaran, *Little America: The War Within the War for Afghanistan* (New York: Alfred A. Knopf, 2012).

The U.S. Central Command, responsible for U.S. military actions throughout most of the Middle East used three three-star headquarters—one U.S. Army corps, one Marine Expeditionary Force, and a common headquarters—to plan, coordinate, and execute the campaign to remove the Saddam regime. All three of these headquarters were withdrawn about 90 days after the initial invasion. The three were replaced by a single, different, three-star U.S. Army corps headquarters that would be responsible for executing the “post combat” phase of the Iraqi invasion, though neither its commander, Lieutenant General Ricardo Sanchez, nor its staff participated in any of the planning or preparation. In fact, General Sanchez was only interviewed by the Secretary of Defense in April—one month after the invasion and less than two before he would assume his responsibilities in Iraq.<sup>154</sup>

One three star headquarters is much less capable than three such headquarters. One—especially one led by a newly minted lieutenant general with an undermanned staff—would not be able to attend properly to the combination of active combat leadership requirements, the tasks associated with rebuilding the Iraqi forces, the logistical tasks inherent in supporting an effort like that in Iraq at the time, and the administration of large detention operations. Nor would one be able to attend adequately to all of the tasks listed above as well as to the demands of coordination with the political, diplomatic, and non-governmental agencies that were responsible for reconstruction and humanitarian assistance.

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<sup>154</sup> Lieutenant General Ricardo S. Sanchez, *Wiser in Battle: A Soldier's Story* (New York: HarperCollins, 2008), pp. 167-69.

In retrospect, the Secretary of Defense, not recalling his interview with Sanchez or his role in the general's assignment, wrote that the commanding general had been put "in a terrible position....The establishment of a government, the long-term care of detainees, the training and equipping of [Iraqi] security forces, the engagement of an increasingly deadly terrorist threat called for a senior military official with far more experience."<sup>155</sup> The Secretary continues by saying that this decision was a "serious misassessment," acknowledging that the tasks assigned to Sanchez required "a large, fully staffed supporting headquarters [but what the commanding general got was]...well less than half—37 percent—of the staff he required."<sup>156</sup> This "misassessment" was not corrected until June 2004, one year after the initial invasion. Reflecting on his experience, General Sanchez agreed, "Without the four-star command in Iraq, [the corps headquarters that I led] had assumed the entire burden for the strategic political–military interface *and* for the tactical warfighting aspects of the mission. It was simply too much of a burden for an Army corps headquarters to bear." (italics in original)<sup>157</sup> The commanding general, however, was not the only one in a terrible position.

An Office of Reconstruction and Humanitarian Assistance (ORHA) had been created hastily in January of 2003, just prior to the invasion. This organization was charged with devising the plans for the rebuilding of Iraq and turning plans into action. The civilian who would initially become responsible for Iraqi reconstruction—Jay Garner, a retired U.S. Army three-star—was first contacted by the Department of the Defense just a few

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<sup>155</sup> Donald Rumsfeld, *Known and Unknown*, *op.cit.*, p. 501.

<sup>156</sup> Donald Rumsfeld, *Known and Unknown*, *ibid.*, p. 501.

<sup>157</sup> Lieutenant General Ricardo S. Sanchez, *Wiser in Battle*, *op.cit.*, p. 382.

months before the invasion of Iraq, in January of 2003.<sup>158</sup> About 30 days prior to launching the invasion, Garner orchestrated a meeting that assembled “most of the players in the government’s postwar game, including the Pentagon, State Department, CENTCOM [U.S. Central Command], the vice president’s office, and McKiernan’s command at Camp Doha [the Kuwaiti base of the three-star headquarters overall responsible for planning, preparing, coordinating, and executing ground operations in Iraq].”<sup>159</sup> The meeting was to provide an “opportunity for each agency to pitch its ideas about how to proceed, but there was, as yet, no master strategy.”<sup>160</sup> In fact, one general who participated in the session concluded that “The U.S. agencies were not ready, had no real understanding of what Iraq was like, and did not yet have a coherent plan.... There was no clear demarcation between what would be run by the civilians and what the generals would control. The funding for the multibillion-dollar undertaking in Iraq was still up in the air, and it was ludicrous to expect that it would all come from the U.N.”<sup>161</sup> By May of 2003, the Office of Reconstruction and Humanitarian Assistance (ORHA) that Garner led was disbanded. He and his staff returned to the United States. In their stead, came Ambassador L. Paul “Jerry” Bremer and the Coalition Provisional Authority (CPA).

In April of 2003—a month after the invasion of Iraq and only two after Garner held his initial meeting at Camp Doha—Ambassador Bremer had been contacted about the possibility of assuming the responsibilities originally given to Garner. After an interview with President Bush, the Ambassador agreed. In his words, the President gave him “full

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<sup>158</sup> Michael R. Gordon and General Bernard E. Trainor, *Cobra II: The Inside Story of the Invasion and Occupation of Iraq* (New York: Pantheon Books, 2006), p. 149.

<sup>159</sup> Michael R. Gordon and General Bernard E. Trainor, *Cobra II, ibid.*, p. 152.

<sup>160</sup> Michael R. Gordon and General Bernard E. Trainor, *Cobra II, ibid.*, p. 152.

<sup>161</sup> Michael R. Gordon and General Bernard E. Trainor, *Cobra II, ibid.*, p. 156.

authority to bring all the resources of the American government to bear on Iraq's reconstruction....I was neither Rumsfeld's nor Powell's man. I was the President's man....Over the next two weeks, I had a frenzied series of meeting at the Pentagon, struggling to get 'read in' on the situation in Iraq before my departure. Between sessions, I scrambled to assemble a staff."<sup>162</sup> Many on that staff were young professionals who had never worked outside the United States and would never leave Baghdad's secure "Green Zone." Many rotated in and out of their jobs in well less than a year, some rotations were as short as 90 days; and many were more politically correct than professionally competent.<sup>163</sup> The Ambassador would hold his job for about a year, until June 2004—the same tenure as Lieutenant General Sanchez.

For a variety of reasons progress that year was, at best, fitful. Saddam Hussein was captured and Iraqi sovereignty was transferred to an interim government that set the conditions for drafting an Iraqi constitution and elections. But, the insurgency grew as did Al Qaeda's involvement in it, fed in part by the increase of foreign fighters but also by the disbanding of the Iraqi Army and the de-Ba'athification program—two Bremer-related policies that were at the time, and remain, controversial. Violence from an expanding Shia militia also contributed to Iraqi insecurity and instability, as did and the misdeeds committed by Iraqi Security Forces and crimes committed by U.S. soldiers in the Abu Ghraib prison. Neither the still-forming Iraqi Army nor its police were

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<sup>162</sup> L. Paul Bremer III, *My Year in Iraq: The Struggle to Build a Future of Hope* (New York: Threshold Editions, 2006), pp. 5-13.

<sup>163</sup> Rajiv Chandrasekaran, *Imperial Life in the Emerald City : Inside Iraq's Green Zone* (New York: Alfred A. Knopf, 2007), pp. 16, 21, 64, 90-94, and 98-99.

proficient enough or large enough to help stem the rising violence. Simply put: the situation in Iraq had deteriorated.<sup>164</sup>

In 2004, one well-known defense analyst put it this way: “it quickly became apparent that the...administration had paid far more attention to the planning and conduct of the war than to the planning and conduct of the ‘peace.’” Moreover, he continues, one of the main obstacles was “continuing division...over U.S. policy toward Iraq and the respective roles of the State and Defense Departments in formulating and implementing that policy.”<sup>165</sup> Major General, retired, Spider Marks, who was a senior intelligence officer in Iraq at this time said, “My position is that we lost momentum and that the insurgency was not inevitable....We had momentum going in...but we did not have enough troops to conduct combat patrols.”<sup>166</sup> General (now retired) Jack Keane, who was the Vice Chief of Staff of the U.S. Army at the time, said more bluntly, that the United States mission in Iraq was made all the more difficult by the administration’s aversion to nation-building and its determination not to study the lessons of its predecessors. Keane added that military leaders, including the Joint Chiefs of Staff, the Vice Chiefs, and General Franks share responsibility [with the political leaders at the time] for the problems in Iraq.<sup>167</sup>

Confusion, insufficient attention, and lack of civil-military cohesion followed the initial success in Iraq, just as in Afghanistan, and the price of this confusion,

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<sup>164</sup> George W. Bush, *Decision Points*, *op.cit.*, pp. 249-50, 257-61, and 268-69.

<sup>165</sup> Jeffrey Record, *Dark Victory: America’s Second War Against Iraq* (Annapolis, Maryland: Naval Institute Press, 2004), pp. 116 and 129.

<sup>166</sup> Michael R. Gordon and General Bernard E. Trainor, *Cobra II*, *op.cit.*, p. 493.

<sup>167</sup> Michael R. Gordon and General Bernard E. Trainor, *Cobra II*, *ibid.*, p. 495.

insufficiency, and lack of cohesion was paid in blood, for years. As Afghanistan slid toward the Taliban, Iraq was coming apart.<sup>168</sup>

In the early summer of 2004, Ambassador Bremer and Lieutenant General Sanchez were replaced by Ambassador John Negroponte and General George W. Casey. Ambassador Negroponte's U.S. Embassy and its staff would replace the *ad hoc* Coalition Provisional Authority. To replace the lone, three-star army corps, General Casey would create a large staff commensurate with his four-star rank (Multi-national Force, Iraq). Additionally, Casey, understanding the complexity and scope of his task, brought in three, three-star deputies: one to run combat operations (Multi-national Corps, Iraq), a second to help create the Iraqi military and police forces (Multi-national Security and Transition Command, Iraq), and a third to run the special operations in Iraq. The strategy, policies, and organizations that were put in place in 2004 would govern the war in Iraq for the next two and a half years. But the violence went from bad to worse.

The summer of 2006, President Bush writes in *Decision Points*, "was the worst period of my presidency. I thought about the war constantly. While I was heartened by the determination of the Maliki Government and the death of Zarqawi [then leader of Al Qaeda in Iraq], I was deeply concerned that the violence was overtaking all else....For

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<sup>168</sup> For more complete accounts of this period, see: Allawi, Ali A., *The Occupation of Iraq: Winning the War, Losing the Peace* (Princeton, New Jersey: Yale University Press, 2007); Bremer, Ambassador L. Paul III, *My Year in Iraq: The Struggle to Build a Future of Hope* (New York: Threshold Editions, 2006); Chandrasekaran, Rajiv, *Imperial Life in the Emerald City: Inside Iraq's Green Zone* (New York: Alfred A. Knopf, 2007); Gordon, Michael R. and General Bernard E. Trainor, *Cobra II: The Inside Story of the Invasion and Occupation of Iraq* (New York: Pantheon Books, 2006); Record, Jeffrey, *Dark Victory: America's Second War Against Iraq* (Annapolis, Maryland: Naval Institute Press, 2004); Ricks, Thomas E., *Fiasco: The American Military Adventure in Iraq* (New York: the Penguin Press, 2006); Sanchez, Lieutenant General Ricardo S., *Wiser in Battle: A Soldier's Story* (New York: HarperCollins, 2008).

the first time, I was worried we might not succeed.”<sup>169</sup> In sum, the strategy in Iraq—pursuing extremists and reducing (the already too small) military footprint as the Coalition trained Iraqi military and police forces— as well as the policies and military operations supporting that strategy were failing. By the summer of 2006, President Bush noted, “an average of 120 Iraqis a day were dying. The war had stretched to more than three years and we had lost more than 2,500 Americans.”<sup>170</sup> In March of 2003 when the invasion of Iraq began, 75% of those polled believed that the U.S. had not made a mistake sending troops to Iraq, and only 23% thought sending troops was a mistake. By December 2006, the numbers were 45% and 53% respectively. Support for the war was clearly slipping.<sup>171</sup>

“For two and a half years,” President Bush writes, “I had supported the strategy of withdrawing our forces as the Iraqis stepped forward—the ‘we’ll stand down as they stand up’ policy. But in the months after the [2006] Samarra [mosque] bombing, I had started to question whether our approach matched the reality on the ground.”<sup>172</sup>

Although there were successes in Iraq—elections to choose an interim national assembly to draft a constitution, a ratified constitution, as well as an election of a Prime Minister and of a permanent legislature—violence escalated nearly out of control, the legitimacy

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<sup>169</sup> George W. Bush, *Decision Points*, *op.cit.*, p. 367.

<sup>170</sup> George W. Bush, *Decision Points*, *ibid.*, p. 367.

<sup>171</sup> Gallup polling data: <http://www.gallup.com/poll/1633/iraq.aspx>.

<sup>172</sup> George W. Bush, *Decision Points*, *op.cit.*, p. 363. The Askariya shrine at the Golden Mosque of Samarra is one of the holiest sites in shia Islam. On February 22, 2006, two massive explosions destroyed the mosque. The attack was an enormous provocation designed to incite a war between Iraqi Shia and Sunnis. It succeeded.



of the war was being questioned, and the President concluded that he required a new strategy with radically new resources and policies.<sup>173</sup>

The 2006 situation in Afghanistan was no better. As President Bush put it, “My CIA and military briefings included increasingly dire reports about Taliban influence. The problem was crystallized by a series of color-coded maps I saw in November, 2006. The darker the shading, the more attacks had occurred in that part of Afghanistan. The 2004 map was lightly shaded. The 2005 map had darker areas in the southern and eastern parts of the country. By 2006, the entire southeastern quadrant was black. In just one year the number of remotely detonated bombs had doubled. The number of armed attacks had tripled. The number of suicide bombings had more than quadrupled.”<sup>174</sup> When the U.S. invaded Afghanistan in November of 2001, 89% of those polled believed that the U.S. had not made a mistake sending troops to Afghanistan, and only 9% thought sending troops was a mistake. By December 2006, the numbers were 25% and 70% respectively. Support for the Afghan war was slipping as well.<sup>175</sup> The U.S. and NATO strategy—diplomatic, military, economic, and political—was failing, the Afghans had lost faith in their government, and sanctuaries in Pakistan contributed to this worsening situation.<sup>176</sup> Further, legitimacy in the eyes of the American public had begun to be an issue.

In the end, the wars in Afghanistan (still not over) and Iraq (with rising violence and resurgent Al Qaeda, Sunni insurgents and Shia militias at the time of this writing)<sup>177</sup> have

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<sup>173</sup> George W. Bush, *Decision Points*, *ibid.*, p. 371.

<sup>174</sup> George W. Bush, *Decision Points*, *ibid.*, pp. 210-11.

<sup>175</sup> Gallup polling data: <http://www.gallup.com/poll/116233/afghanistan.aspx>.

<sup>176</sup> George W. Bush, *Decision Points*, *op.cit.*, pp. 211-17.

<sup>177</sup> Jessica Lewis, *Al Qaeda in Iraq Resurgent, Part I* (Washington, D.C: The Institute for the Study of War, September, 2013); *Part II*, *ibid.*, October, 2013; and *The Islamic State of Iraq Returns to Diyala*, *ibid.*, April, 2014. All available at [www.understandingwar.org](http://www.understandingwar.org).

cost the United States over 6,500 killed and over 51,000 wounded and an estimated \$3 trillion dollars.<sup>178</sup>

The point of reviewing Iraq and Afghanistan, and recalling the Civil War, is not to recount mistakes. No war is devoid of mistakes at any level, tactical through strategic, made by military and political leaders. Every war contains a record of the learning and adapting necessary to move from pre-war beliefs and doctrines to what waging war and fighting actually requires. Rather, the point is to provide a more detailed account of war-waging responsibilities than was presented in chapter 1. Further, to point out how difficult it is to exercise these responsibilities “sufficiently right” and how badly poor execution of these responsibilities affects the conduct of war. Lives, of the innocent and of soldiers, are lost in every war; every war also involves risk to the political community, whether existential or a lesser degree. Sufficient effectiveness in waging war, however, reduces the risks and lessens the likelihood that the lives used in war are wasted. The reverse is also true: ineffectiveness in waging war increases the loss of innocent life, risk to the political community, and the likelihood that the lives used are wasted. In sum, all three examples—World War II, the American Civil War, and the U.S. post 9/11 wars—demonstrate that the conduct of war includes both war-fighting and war-waging dimensions, that both dimension are related to individual and communal life, and that effectiveness in waging war matters.

To be a complete account of justice in the conduct of war, therefore, *jus in bello* cannot be limited only to right conduct in battle. Such a narrow focus omits a crucial way in

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<sup>178</sup> Department of Defense casualty count, July, 28, 2013. At <http://www.defense.gov/news/casualty.pdf>. For the dollar cost, see Daniel Trotta, “Cost of War at Least \$3.7 trillion and Counting,” *Reuters*, June 29, 2011 at: <http://www.reuters.com/article/2011/06/29/us-usa-war-idUSTRE75S25320110629>.

which senior political and military leaders can meet or fail to meet their wartime responsibilities. *Jus in bello* must include right conduct in waging war just as it includes right conduct in fighting war.

The brief review of the U.S. Civil War, the discussion of World War II in the previous chapter, and the initial look at the more recent wars in Afghanistan and Iraq, reveal that waging war involves at least the following senior political and military responsibilities:

1. Making the best initial decisions possible concerning war aims, strategies (domestic, diplomatic, military, and non-military), policies, and campaigns.
2. Adapting initial decisions as the dynamics of war unfold.
3. Raising and allocating forces, other resources, and funds necessary to achieve those aims,
4. Engaging in adequate diplomacy.
5. Attending to the legitimacy of the war—maintaining public support.
6. Making the military and non-military governmental agencies work well enough to execute strategies and policies and attain war aims.
7. Establishing mechanisms that facilitate proper dialogue, decision making, action, and adaptation.

Depending upon the effectiveness of these war waging activities, a war can be shortened or prolonged. Prolonging war unnecessarily entails more death—combatant and noncombatant—and requires more of a nation's other resources. When these actions are not adequately attended to, the cost is paid in lives as surely as failures and violations of the tactical dimension of war fighting. A complete just war theory must expand its understanding of the conduct of war to accommodate the full set of war-waging activities and responsibilities.

Again, every war has mistakes, tactical through strategic, and every war contains a record of the learning and adapting from pre-war misconceptions to realities of war. Some mistakes will, fortunately, not result in unnecessary loss of life. Others will. Still others are not really mistakes at all. Rather, they amount to failures of some senior

political and military leaders in meeting their war-waging responsibilities. These kinds of failures are neither an “unfortunate consequence of war,” nor are they merely examples of human fallibility which are understandable. Rather, they are the result of a kind of failure that just war theory must have the means to identify, criticize, and judge.

Soldiers and their leaders who observe the tactical *jus in bello* principles that Walzer presents mitigate part of war’s nastiness. Applying these principles in combat is part of a soldier’s and a leader’s moral responsibility in war. Sufficient capacity at the strategic, war-waging level can also mitigate part of war’s nastiness. Applying the appropriate war-waging principles is part of a senior political and military leader’s moral responsibility in war. Just war theory, therefore, must identify appropriate principles for the strategic dimension of *jus in bello*. (This study will suggest a set of war-waging principles in chapter six.)

The standard for deciding upon war aims, strategy, policy, and military campaigns, then executing those decisions and adapting as the war unfolds is not perfection; no government or set of civil-military leaders could ever meet that standard. Every government will make mistakes initially. Every government’s policy and strategy as well as their execution will be only partially effective and efficient. If a government’s civil and military leaders can learn and adapt quickly enough, it can make fewer mistakes than its enemy, improve its efficiency and effectiveness, thus increasing the probability of success and decreasing the probability of putting the political community at risk and wasting the lives of the innocent and the citizens-who-become-soldiers as well as other national resources. If, however, a government’s civil and military leaders do not learn and adapt but continue to conduct a war for unattainable aims, using known inefficient

and ineffective strategies and policies, or through known inefficient or ineffective organizations and management processes, those leaders should be morally blameworthy—even if not legally guilty—for the results of their actions just as soldiers and their leaders ignoring the war convention would be on the battlefield. Life, even if a soldier's, is not a resource to be used without compunction. Those senior political and military leaders whose responsibility it is to wage war have a responsibility to act in ways that lives—not only of the innocent but also of the soldiers they employ—are respected, not squandered.

### **A Soldier's Life Retains Moral Value.**

Walzer firmly establishes the important role that the lives of the innocent play in *jus in bello*. Conducting a war necessarily entails putting the lives of the innocent at risk, and the war-fighting *jus in bello* principles that he adduces are designed, rightly so, to limit risk to the innocent. Conducting a war also necessarily entails using the lives of other human beings—whether at the war-fighting or war-waging level. *Jus in bello* must also address how these lives can be used. Walzer's emphasis on the lives of the innocent and on the effect that respecting the value of these lives has in the conduct of war is necessary, absolutely necessary, but it is insufficient. A soldier's life also retains moral value and respecting the value of these lives also affects the conduct of war.

Confused and ill-thought out war aims, strategic concepts, and operational policies have consequences in the conduct of war, as do personnel policies, logistics policies, management structures, and decision-making and execution processes. As Afghanistan

and Iraqi policies were being argued, decided, and implemented, innocents as well as American citizens-who-became-soldiers were dying each day. Citizens-who-become-soldiers understand that their lives change once they become soldiers. Their inherent right to life is altered in substantial ways. Soldiers become instruments, but not “mere instruments.” They can be killed in war, justifiably; they are expected to risk their lives on behalf of the innocent, their fellow soldiers, and their political community. They remain, however, not only moral agents, but also human beings and citizens.

The continued value of their lives during the conduct of war is manifested in three, morally relevant relationships. The first is with the innocent—reflected in the limit of “due care” set at “due risk.” Walzer treats this relationship adequately. The second is with their military leaders—reflected in military leader obligations that recognize, as Walzer points out and General McChrystal’s remarks quoted in chapter 1 make clear, that “his soldiers are in one sense instruments with which he is supposed to win victories, but they are also men and women whose lives, because they are his to use, are also in his care.”<sup>179</sup> Walzer recognizes this relationship, but his treatment of it is less complete. The third is between citizens-who-become-soldiers and their government. This relationship and its relevance to *jus in bello* is all but absent from Walzer’s account.

This third relationship is reflected in President Lincoln’s words at Gettysburg, and also reflected in President Bush’s remarks on the evening of January 10, 2007, when he stepped in front of television cameras and said, “The situation in Iraq is unacceptable to the American people—and it is unacceptable to me. Our troops in Iraq have fought bravely. They have done everything we asked them to do. Where mistakes have been

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<sup>179</sup> Michael Walzer, *Arguing About War*, *op.cit.*, p24.

made, the responsibility rests with me. It is clear that we need to change our strategy in Iraq.”<sup>180</sup> Here the President is clearly referring to what the government owes the citizens-who-become-soldiers so that their lives are used well: properly identified war aims, strategies, and policies, as well as effective military campaigns and the political and military bureaucracies that can translate plans into actions—all so that their sacrifices are not in vain. Separate from his remarks on television, the President clearly describes the necessity of dialogue between senior political and military leaders in his discussion not only of the decisions he made leading up to the 2007 changes in Iraqi strategy, policy, and personnel but also in their execution.<sup>181</sup>

Walzer recognizes that political leaders should not plan, prepare, initiate, and wage an aggressive war, else the war would be unjustified. Accordingly, governments must use the lives of their citizens-who-become-soldiers only for “purposes worth dying for, outcomes for which soldier’s lives are not too high a price. The idea of a just war requires the same assumption. A just war is one that it is morally urgent to win, and a soldier who dies in a just war does not die in vain. Critical values are at stake [i.e. the defense against aggression or other uses of force authorized by the Legalist Paradigm and its exceptions]...The deaths that occur in their course...are morally comprehensible—which is not to say that they are also occasionally the products of military stupidity and bureaucratic snafu: soldiers die senselessly even in wars that are not senseless.”<sup>182</sup> For Walzer, the legitimate ends of war, its goals, set limits for even a just war. “Once they are won, or once they are within political reach, the fighting should stop. Soldiers killed

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<sup>180</sup> George W. Bush, *Decision Points*, *op.cit.*, p. 378.

<sup>181</sup> George W. Bush, *Decision Points*, *ibid.*, pp. 354-394

<sup>182</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, p. 110.

beyond that point die needlessly, and to force them to fight and possibly to die is a crime akin to that of aggression itself.”<sup>183</sup> Nor can political leaders set in place policies that require war crimes. These are the three limits that *Just and Unjust Wars* places on the legitimate use of state power. A government’s relationship to its citizens-who-become-soldiers, however, demands more.

In *Just and Unjust Wars*, Walzer did not address this relationship or its moral relevance with respect to the conduct of war, for he provided only an account of right conduct in the fighting of war. In *Spheres of Justice: A Defense of Pluralism and Equality*, however, Walzer provides a way to account for this third relationship and explain a fourth limit on the legitimate use of state power in the waging of war: that lives are to be used as wisely as possible.<sup>184</sup>

In democracies, *Spheres of Justice* argues, state power is necessary but limited and flows from citizens to political leaders and institutions.<sup>185</sup> Democratic sovereignty does not entail domination over its citizens. The moral relevance of Walzer’s two most basic human rights of life and liberty are manifest in his account of *jus in bello* at the tactical, war-fighting level; they also provide an account of senior political and military leaders’ war-waging responsibilities and should be captured by the *jus in bello*’s strategic dimension.

These rights, retained by citizens-who-become-soldiers relative to both their military and political leaders, prevent service from becoming enslavement. The concept of

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<sup>183</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 110.

<sup>184</sup> Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), pp. 282-84 and 289.

<sup>185</sup> Michael Walzer, *Spheres of Justice*, *ibid.*, p. 281.



slavery entails an absence of any kind of rights. The slave is not a person. He or she becomes an object, a piece of property that can be used as any other object one owns. This is what makes slavery so morally objectionable. In becoming a soldier serving a democracy, whether conscripted or volunteer, a citizen does not become a slave nor does the state become a tyrant. As with all other citizens, the power of the state is limited with regard to citizens-who-become-soldiers.

Certainly, as has already been presented, soldiers can be used in ways other citizens cannot. Justice places limits, however, on how the lives of soldiers can be used. That is, even in a just war, justice demands that a government use the lives of its citizens-who-become-soldiers as wisely as possible. Ineptitude in waging war—errors beyond understandable mistakes resulting from human fallibility—forces citizens to fight under conditions that increase the likelihood that their sacrifices will be in vain.

Justice arises in a system that “ideally rational men and women would choose if they were forced to choose impartially, knowing nothing of their own situation, barred from making particularist claims, confronting an abstract set of goods.”<sup>186</sup> Not knowing his or her position in a society, set of natural assets and abilities, or level of intelligence, no citizen would choose a system that might require a total loss of rights should he or she become a soldier. Rather, the rational choice from behind this “veil of ignorance” would be to ensure the system of justice include limits as to how the government can use the lives of citizens-who-become-soldiers—even in war.<sup>187</sup> These limits may be ambiguous, like the line between due risk and due care or the line between bravery and heroism, but

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<sup>186</sup> Quoted from Michael Walzer, *Spheres of Justice*, *ibid.*, p. 5, but referring to John Rawls, *A Theory of Justice* (Cambridge, Massachusetts: The Belknap Press, 1971), especially pp. 11-22.

<sup>187</sup> John Rawls, *A Theory of Justice*, *ibid.*, p. 12.

limits exist none-the-less. Clear limits, for example, are set by duration—the increased risk demanded of soldiers ends when a soldier is captured, wounded, or leaves service. A second clear limit is condition—risks acceptable during a war are greater than those acceptable in peacetime training. Scope is a third clear limit—a democratic government cannot limit a soldier’s right to religious belief, for example, or to own personal property.

War-waging *jus in bello* responsibilities, absent from Walzer’s account, emanate not only from responsibilities toward the innocent and toward one’s political community but also from what democratic governments owe the citizens whose lives they use, whether volunteers or conscripts. That is, that the senior political and military leaders waging a war on behalf of a democratic government may not squander the lives of the citizens—who-become-soldiers without accruing moral blame. Rather, they must use these lives responsibly. “Responsible use” is a fourth limit on governmental power. When senior political and military leaders fail to meet their war-waging responsibilities, and the failure is not merely a mistake or error, they act beyond the limit of “responsible use” and are, therefore, morally blameworthy.

### **Conclusions: Looking beyond Walzer.**

*Jus in bello*, justice in the conduct of war, must expand to include principles and a theory of responsibility for those waging war. To understand these responsibilities will require looking beyond Walzer. One possible explanation of these responsibilities, which will be taken up in the next chapter, lies with the principal-agent theory found in Peter

Feaver's *Armed Servants: Agency, Oversight, and Civil-Military Relations*.<sup>188</sup> In this book, Feaver argues that “the essence of civil-military relations is a strategic interaction between civilian principals and military agents.” This is the exact intersection at which war-waging decisions—war aims, strategy, policy, and military operations—and their execution meet. This is also the intersection of both governmental and military bureaucracies. Although Feaver does not intend the principal-agent framework he presents in *Armed Servants* to be used to fill the *jus in bello* gap in just war theory, his concepts are worth investigating as possible gap-fillers.

*Armed Servants* uses as its starting point Samuel Huntington's classic work, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*.<sup>189</sup> Feaver acknowledges Huntington's decades-long influence in the United States, but seeks to advance an alternative theory, “drawing upon relatively recent advances in the study of political oversight of the non-security bureaucracy.”<sup>190</sup> An understanding of Feaver, therefore, will require a short discussion of Huntington's central ideas. Feaver departs from Huntington by using the “principal-agent framework to derive a specific theory” to explain how senior civilian and military leaders, and their bureaucracies, interact.<sup>191</sup> Political leaders are the principals; military leaders, their agents. Chapter 3 provides with a brief summary of Huntington, so that Feaver's principal-agent framework can be understood within the correct context. Then the chapter goes on to present, analyze, and critique the framework Feaver adduces.

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<sup>188</sup> Feaver, Peter D. *Armed Servants: Agency, Oversight, and Civil-Military Relations* (Cambridge, Massachusetts: Harvard University Press, 2003).

<sup>189</sup> Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1957)

<sup>190</sup> Feaver, Peter D. *Armed Servant*, *op.cit.*, p.2.

<sup>191</sup> Feaver, Peter D. *Armed Servant*, *ibid.*, p. 3.

### Chapter Three:

#### The Relationship between Senior Political and Military Leaders

This chapter will investigate whether the principal-agent theory of civil-military relations as expressed primarily in Peter Feaver's *Armed Servants: Agency, Oversight, and Civil-Military Relations* can provide an adequate foundation for the war-waging responsibilities identified in chapter 1 and explored in detail in chapter 2.<sup>192</sup> *Armed Servants* investigates how the civil and military bureaucracies of the U.S. defense establishment and their senior leaders interact with one another. Specifically, Feaver hopes to answer this question: How do civilians control the military?<sup>193</sup> Samuel Huntington's classic work, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*<sup>194</sup> is the starting point for Feaver's discussion in *Armed Servants*. Feaver acknowledges Huntington's decades-long influence in the United States, but seeks to advance an alternative theory, "drawing upon relatively recent advances in the study of political oversight of the non-security bureaucracy."<sup>195</sup> An understanding of Feaver, therefore, requires a short discussion of Huntington's central ideas.

This chapter will find that Feaver's approach contributes to the understanding of the tri-partite tension inherent in waging war, namely the requirements of execution and the importance of civil primacy. Ultimately, however, the principal-agent framework used in *Armed Servants* will be found incapable of providing an adequate foundation for the war-

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<sup>192</sup> Peter D. Feaver, *Armed Servants*, *ibid.*

<sup>193</sup> Peter Feaver, *Armed Servants*, *ibid.*, p. 1.

<sup>194</sup> Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1957)

<sup>195</sup> Feaver, Peter D. *Armed Servant*, *op.cit.*, p.2.

waging responsibilities of senior political and military leaders. The principal-agent framework's over-focus on military compliance and on the economic-based relationship between civilian-principals and military-agents risks excluding other essential aspects of senior leader war-waging responsibilities as well as treating the lives of citizens-who-become-soldiers as if they have less value than they actually do.

### ***The Soldier and The State and Armed Servants.***

Huntington's *The Soldier and the State* uses a paradox to identify the core issue in democratic civil-military relations. On one hand, to provide security, which is a military force's function, a nation's military must be large enough and have sufficient skills, leadership, and materiel to create and sustain the capacities the nation needs to be secure relative to the threats that nation faces, or believes it faces. On the other hand, a nation's military cannot be so strong that it ends up destroying the very state it is designed to serve. "The military institutions of any society," Huntington claims, "are shaped by two forces: a functional imperative stemming from the threats to the society's security and a social imperative arising from the forces, ideologies, and institutions dominant within the society."<sup>196</sup> Achieving a proper balance between the functional and social imperatives is, for Huntington, the crux of the civil-military relationship issue.

Huntington suggests that the proper balance is achieved through a complex set of power and attitudinal relationships among civilian and military groups. "Nations which develop a properly balanced pattern of civil-military relations," he goes on to say, "have a

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<sup>196</sup> Samuel P. Huntington, *The Soldier and the State*, *op.cit.*, p. 2.

great advantage in the search for security. They increase their likelihood of reaching right answers to the operating issues of military policy. Nations which fail to develop a balanced pattern of civil-military relations squander their resources and run uncalculated risks.”<sup>197</sup> For Huntington, increasing the likelihood of reaching right answers to the operating issues—that is, the war-waging activities of identifying strategic aims, then crafting strategies and policies and conducting military campaigns that will lead to achieving those aims—is an important part of the functional imperative. Having and using a military force, should use become necessary, without putting the state itself at risk results from properly balancing both the functional and social imperatives. *The Soldier and the State* posits five ways to balance the functional and social imperatives, thus create a proper civil-military relationship. Huntington ultimately rejects the first four, and adopts the fifth.<sup>198</sup>

Military officers and political leaders form the core of the civil-military relationship. The military officer corps, Huntington says, is the “active directing element of the military structure and is responsible for the military security of the society.” The political leaders of the state are “responsible for the allocation of resources among important values including military security.”<sup>199</sup> The first way to ensure a proper balance between the functional and social imperative Huntington calls “subjective civilian control.” In this form, the civilian group that has gained control of the state simply selects a sufficient number of officers that agree with the controlling group’s ideology. Huntington says that “subjective control is...the only form of civilian control possible in the absence of a

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<sup>197</sup> Samuel P. Huntington, *The Soldier and the State*, *ibid.*, p. 2.

<sup>198</sup> Samuel P. Huntington, *The Soldier and the State*, *ibid.*, pp. 80-85.

<sup>199</sup> Samuel P. Huntington, *The Soldier and the State*, *ibid.*, p. 3.

professional officer corps....and except very recently in western society, civilian control has existed only in this subjective sense.”<sup>200</sup> The second alternative he considers is called “civilian control by governmental institutions.”<sup>201</sup> This alternative has the military forces under the control of the nation’s Chief Executive—the Crown, the President, or the Prime Minister—or the nation’s representative body—a Parliament, Council of Representatives, or Congress. The third method is called “civilian control by social class.”<sup>202</sup> Here military forces are controlled by an aristocracy or some other sub-group, sect, or tribe of the nation at large. Fourth, Huntington poses “civilian control by constitutional form.”<sup>203</sup> That is, civilian control is identified with democracies, while military control is associated with absolute or totalitarian governments. He rejects these four forms of civil-military relationships as proper for the United States because each increases the military participation in politics which, in turn, puts the social imperative at risk.

Huntington points out that even in a democracy “the military may undermine civilian control and acquire great political power through the legitimate process and institutions of democratic government and politics.”<sup>204</sup> The fifth alternative, the one that Huntington ultimately adopts, is “objective civilian control” which maximizes military professionalism.<sup>205</sup> The essence of objective civilian control is “the recognition of autonomous military professionalism; the essence of [the forms of] subjective civilian control is the denial of an independent military sphere.”<sup>206</sup> Objective control, as Huntington posits it, requires a highly professional officer corps that will carry out the

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<sup>200</sup> Samuel P. Huntington, *The Soldier and the State*, *ibid.*, pp. 80-81.

<sup>201</sup> Samuel P. Huntington, *The Soldier and the State*, *ibid.*, p. 81.

<sup>202</sup> Samuel P. Huntington, *The Soldier and the State*, *ibid.*, pp. 81-82.

<sup>203</sup> Samuel P. Huntington, *The Soldier and the State*, *ibid.*, pp. 82-82.

<sup>204</sup> Samuel P. Huntington, *The Soldier and the State*, *ibid.*, p. 82.

<sup>205</sup> Samuel P. Huntington, *The Soldier and the State*, *ibid.*, pp. 83-96.

<sup>206</sup> Samuel P. Huntington, *The Soldier and the State*, *ibid.*, p. 83.

wishes of any group of political leaders regardless of its ideology. Crudely put, a degree of military autonomy is exchanged for an apolitical officer corps and military. Objective control strengthens the military's functional capacity while ensuring it remains a tool of the state; the forms of subjective control decrease functional capacity because they "civilianize" and "politicize" the military and increase the military's involvement in politics—thus putting both the functional and social imperatives at risk.<sup>207</sup>

Huntington then acknowledges that the U.S. Constitutional separation of powers is a stumbling block to the ideal version of objective control because the military must report to both the Legislative and Executive branches of government and, therefore, will be involved in the political struggles between those branches. In the end, however, Huntington concludes that no actual civil-military relationship is ever ideal and "within the framework of the separation of power, institutional adjustments can be made which will reduce its deleterious effects. But...a lesser measure of civilian control and lower standards of military professionalism are the continuing prices the American people will have to pay for the other benefits of their constitutional system."<sup>208</sup>

Since its publication in 1957, *The Soldier and The State* has had an on-going, significant, and one might even say, dominant, influence in the way American military and political leaders view each other's roles.<sup>209</sup> Reflecting this continuing influence General (retired) Barry McCaffrey, who has had experience with U.S. civil-military relations as both a general and a cabinet member, suggested in 2009 the following

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<sup>207</sup> Samuel P. Huntington, *The Soldier and the State*, *ibid.*, pp. 84-85.

<sup>208</sup> Samuel P. Huntington, *The Soldier and the State*, *ibid.*, pp. 191-92.

<sup>209</sup> A good summary of Huntington's position as well as the contribution and influence *The Soldier and The State* has had on the U.S. military can be found in Suzanne C. Nielsen and Don M. Snider, *American Civil-Military Relations: The Soldier and The State in a New Era* (Baltimore, Maryland: The Johns Hopkins University Press, 2009), especially pp. 1-10 and 290-308.



guidelines for senior military officers, “First, senior military leaders must adamantly manifest non-partisan behavior and attitudes while on active duty....[and]...must be viewed by the public and senior civilian leaders as politically neutral and blind to partisan considerations. Second, senior military leaders speak frankly and objectively, where their professional judgments are asked for and not reflect a loyalty to hierarchy that leaves the policy process adrift....[and they] must be utterly transparent and honest when dealing with their constitutional masters in Congress; with the President and the president’s officers....”<sup>210</sup> Walzer, too, reflects Huntington’s influence—even if not intentionally. Huntington’s objective control and the autonomy of the political and military spheres it requires form the foundation of the hard line that Walzer draws between war itself and the conduct of war.

In *Armed Servants* Peter Feaver recognizes that “Huntington’s theory, outlined in *The Soldier and the State*, remains the dominant theoretical paradigm in civil-military relations, especially the study of American civil-military relations....Huntington’s model is widely recognized as the most elegant, ambitious, and important statement on civil-military relations theory to date.”<sup>211</sup> Feaver seeks to update one portion of Huntington’s objective control model, however, using a principal-agent framework.<sup>212</sup>

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<sup>210</sup> Quoted in Suzanne C. Nielsen and Don M. Snider, *American Civil-Military Relations*, *ibid.*, p. xv.

<sup>211</sup> Peter D. Feaver, *Armed Servant*, *op.cit.*, p. 7.

<sup>212</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, pp. 8-10 and 55-56.

### **Feaver's Principal-Agent framework.**

The principal-agent framework is “an approach developed by economists to analyze problems of agency, where one person has delegated authority to someone else to act on his behalf.... Civilians invent the military, contracting with it to protect society from enemies, but then civilians find it necessary to assure themselves that the military will behave as intended.”<sup>213</sup> In sum, the framework that Feaver uses supposes that a specific type of employer-employee relationship exists between civilians and the military. He explains that relationship this way: “The employer (principal) would like to hire a diligent worker (agent), and, once hired, would like to be certain that the employee is doing what he is supposed to do (working) and not doing something else (shirking). The employee, of course, would like to be hired and so has an incentive to appear more diligent during the interview than he really is; this fact complicates the employer’s efforts to pick the sort of employee who will want to work hard.... Once hired, moreover, the employee has an incentive to do as little work as he can get away with, all the while sending information back to the employer that suggests he is performing at an acceptable level; this fact complicates the employer’s efforts to keep tabs on the employee.... The principal-agent approach, then, analyzes how the principal can shape the relationship so as to ensure that his employees are carrying out his wishes....”<sup>214</sup>

In the case of the civilian (employer)-military (employee) relationship, “the military officer is promising to risk his life, or to order his comrades to risk their lives, to execute any policy decisions. The civilian actor is promising to answer to the electorate for the

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<sup>213</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 54.

<sup>214</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, pp. 54-55.

consequences of any policy decisions. The military officer is expected to obey even stupid orders, or resign in favor of someone who will. The civilian is claiming the right to be wrong.”<sup>215</sup> This kind of military officer-civilian leader relationship forms, for Feaver, “a subtextual [to the] civil-military discourse for all policy making in the national security realm.”<sup>216</sup> The civil-military, employer-to-employee relationship returns Feaver to the basic paradox that Huntington describes: the employers (civilian leaders) want two things from their employees (the military), to protect against external enemies—the functional imperative, and to remain subordinate to their employees—the social imperative which Feaver calls “the Relational Goal.”

Feaver defines the functional goal in terms of “working”—that is, the employee doing what the employer wants and doing it the way the employer wants it done.<sup>217</sup> Doing anything other than what the employer wants as the employer wants it done is “shirking.” Working, according to Feaver but quite unlike Huntington, does not necessarily mean that the outcomes of military action will please civilians. In fact, some of the things that civilian leadership wants done may in fact result in losing a war, for working and shirking are not synonymous with winning and losing on the battlefield. One side can “work,” in the narrowly-defined, principal-agent framework sense of the work, and still lose; likewise, one side can “shirk” and still win.<sup>218</sup> In the principal-agent framework, military officers “should advise against...policies [they consider ill-advised], but the military should not prevent those policies from being implemented.”<sup>219</sup> What Feaver is insisting on is not a civil-military relationship that increases the probability of “choosing wisely”

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<sup>215</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p.8.

<sup>216</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, pp. 8 and 9.

<sup>217</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 61.

<sup>218</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 64.

<sup>219</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 65.

with respect war to aims, strategies, policies, or military campaigns—which was inherent in Huntington’s understanding of the functional imperative. Rather, because of the very specific way the principal-agent framework understands the employer-employee relationship, the resultant military officer-political leader relationship is based primarily, perhaps even solely, on power and control.

Civilians are related to the military as principals and employers are related to agents and employees. Further, according to the principal-agent framework that Feaver uses, employees are always likely to shirk, given the chance. Even if employee goals and desires coincide with those of the employers, employers would not necessarily know that. As such, civilian-employers must figure out how to best monitor and control their military-employees so as to make sure they do what the employers want and how they want it done. That is, civilian-employers must identify cost-effective monitoring schemes that increases the likelihood of their military-employees “working” and reduces the incidences of “shirking.” All employers must monitor employees, so the question is only how intrusive or extensive must the monitoring scheme becomes.

In some ways, Feaver’s discussion is unremarkable. Senior leaders of all large organizations—whether government bureaucracies, corporations, or military headquarters—are charged to “get things done,” so must monitor their work force and subordinate leaders. Goals without strategies to execute them are dreams, and execution—especially in large, complex, and geographically dispersed organizations—requires monitoring schemes. In this sense, all senior military leaders monitor their own organizations through a combination of personal inspections as well as staff and subordinate leader reports and assessments. Senior political leaders—Executive and

Legislative—also monitor not only the civilian and military actions within the Department of Defense but also the other departments, agencies, and organizations that make up the U.S. government. Such monitoring is, and will always be, conducted.

Similarly unremarkable is Feaver’s “right to be wrong,” if this formulation can be taken merely as a strongly worded way to say that in democracies the final decision authority concerning war aims, strategies, policies, and campaigns lies with senior political leaders, not military leaders. Civilian principals have the right to direct military agents to do something that ultimately proves costly, foolhardy, and even disastrous. Military agents have an obligation to point out, honestly and clearly, the potential negative consequences of proposed courses of action. Feaver recognizes that senior military leaders should always present their views and assessments, argue over what they believe are imprudent strategies or policies, and make every attempt to mitigate risks inherent in the final decisions.<sup>220</sup> In the end, however, the choices for senior military leaders are few: execute the decisions of the senior political leaders as if they were their own and inform political leaders of any adaptations to initial directives based upon unfolding realities on the battlefield, or resign.

In this unremarkable sense, Feaver’s approach is merely descriptive of what is necessary to ensure the proper balance between the functional and social imperative, thus making sure a nation has both a strong, capable military and one that is subordinate to civilian authority. In other ways, however, Feaver’s approach goes well beyond this unremarkable sense causing an imbalance between the functional and social imperatives. Further, the imbalance created by the principal-agent framework results from an

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<sup>220</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 171.

inaccurate understanding of the functional imperative and the roles that both senior political and military leader play in waging war.

Feavers's approach is radically incomplete. A civil-military relationship based upon power and control is not the kind of relationship necessary to wage war. The object of the wartime civil-military relationship—to identify the set of war aims, strategies, policies, and military campaigns which when executed, have the highest probability of success and to adapt these aims, strategies and policies as the reality of war unfolds—is left out of a framework that defines “work” as narrowly as does *Armed Servants*. Power and control replace the functional imperative as Huntington conceived of it, or at least diminishes its importance.

Feaver uses the Vietnam War as “a case of military working even in the presence of sharp disagreements between civilians and the military.”<sup>221</sup> The Vietnam War, then, provides a good example of why Feavers's approach is radically incomplete. The principal-agent framework is not concerned with evaluations of whether the United States should have intervened, whether the intervention was executed well, or the outcome of the intervention. Rather it is concerned “first and foremost with whether and why military agents acted as directed by civilian principals, whether the military complied with its civilian masters.”<sup>222</sup>

“It is generally conceded,” Feaver states, “that the military did not press the war on reluctant civilian leaders but rather the reverse.”<sup>223</sup> Feaver does describe several times

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<sup>221</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 171.

<sup>222</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 172.

<sup>223</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 172.

during the Vietnam War at which the military could be rightly accused of shirking,<sup>224</sup> and he notes that there is some conventional wisdom that says the military did not shirk enough during the war, that they were “overprofessional” in their attitude.<sup>225</sup> But in the end, he calls attention to the fact that the Joint Chiefs of Staff did not resign *en masse* in 1967, so concludes that the military did not shirk as much as one might have expected and that Vietnam was in general an example of military subordination in which the military obeyed an order to fight.<sup>226</sup> In terms of the agency framework, “civilians monitored intrusively and the military apparently worked during the Vietnam War.”<sup>227</sup> He then turns his attention to the questions of why the military subordinated themselves to civilian leadership and to what result?

As to why, Feaver presents three main reasons. First, “there is direct evidence supporting the agency interpretation that military expectations of punishment were high.”<sup>228</sup> In the 1960s, senior military leaders would have had clear memories of General Douglas MacArthur’s insubordination to President Truman and subsequent removal from command in Korea. This memory was reinforced during a conversation between President Johnson and General Westmoreland in February 1966. The President

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<sup>224</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, pp. 172-74.

<sup>225</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 174. The conventional wisdom to which Feaver refers comes primarily from three U.S. Army officers who claim that senior military leaders were too compliant with strategies they knew were not succeeding and could not succeed—the latter being more important than the former: Colonel Harry G. Summers, *On War: The Vietnam War in Context* (Carlisle Barracks, Pennsylvania: Strategic Studies Institute, 1981); Lieutenant General Bruce Palmer, Jr. *The 25-Year War: America’s Military Role in Vietnam* (Lexington, Kentucky: The University Press of Kentucky, 1984); and (then Major but now Major General) H.R. McMaster, *Dereliction of Duty: Lyndon Johnson, Robert McNamara, the Joint Chiefs of Staff, and the Lies That Led to Vietnam* (New York: Harper Collins Publishers, 1997). Feaver did not reference, but could have, one more military piece that follows suit: Brigadier General Douglas Kinnard, *The War Managers* (Wayne, New Jersey: Avery Publishing Group Inc., 1985).

<sup>226</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 172 and 174.

<sup>227</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 175.

<sup>228</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 175.

reportedly told the General, “I have a lot riding on you...I hope you don’t pull a MacArthur on me.”<sup>229</sup> Second, the Johnson administration manipulated the services. “Interservice rivalry and the preoccupation of senior military officers with advancing their own service interests gave civilian principals the opportunity to offer service ‘side payments’ in the form of an expansion in the size of the Marine Corps or control over particularly desirable billets that inflated the value of working.”<sup>230</sup> Finally, civilian leaders used a form of subjective control and “promoted senior military officers who concurred with the civilian viewpoint, or at least did not disagree so strongly.”<sup>231</sup>

The Vietnam War lasted over two decades—from the 1954 advisory effort to the final withdrawal in 1975.<sup>232</sup> The war resulted in 58,220 U.S. deaths,<sup>233</sup> cost about \$738 billion (in fiscal year 2011 dollars), and did not attain the stated U.S war aims.<sup>234</sup> These results, however, do not matter with regard to analyzing the war from the principal-agent perspective. “The goal civilians pursued, the substance of ‘working,’ was to preserve South Vietnam without conquering North Vietnam....This was quite clearly what civilian leaders wanted, and they refused to pay for anything more. Such a goal was inappropriate and perhaps unachievable, given...strategic realities....But it was the policy the civilians asked for and, by and large, it was the policy the military delivered. So far as civil-military relations go, civilians have a right to be wrong. This time they were.”<sup>235</sup>

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<sup>229</sup> Quoted in Peter D. Feaver, *Armed Servant*, *ibid.*, p. 175.

<sup>230</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 175.

<sup>231</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 175.

<sup>232</sup> I used the dates in Andrew F. Krepinevich, Jr., *The Army and Vietnam* (Baltimore, Maryland: The Johns Hopkins University Press, 1986).

<sup>233</sup> I used statistics available at <http://www.archives.gov/research/military/vietnam-war/casualty-statistics.html#water>.

<sup>234</sup> I used the Congressional Research Services estimates available at <http://www.fas.org/sgp/crs/natsec/RS22926.pdf>. The estimate is based upon 1965-1975 spending.

<sup>235</sup> Peter D. Feaver, *Armed Servant*, *op.cit.*, pp. 177-78.



The perspective in which Feaver is interested is this: Vietnam was an example of a divergence of views between political and military leaders. Intrusive monitoring, threats of punishment, and manipulation were required to ensure the military “worked” and did not “shirk.” The Johnson administration used each of these mechanisms, and the military “worked” in the narrow, principal-agent sense of the word.

The Vietnam War, in Feaver’s mind, is an example of the principal-agent approach at work. He presents the elements of the principal-agent framework; then uses Vietnam—as well as the Cold War, Gulf War, Somalia, Haiti, Bosnia, and Kosovo—to show how the framework applies in real cases.<sup>236</sup> Each case is evaluated by one criterion: did the military “work” or “shirk.” That is, whether political leaders retained power and control over the military. Feaver’s fundamental issue is to establish how principals act in order to secure compliance with their agents.

The intent of *Armed Servants* is not, however, merely to analyze one aspect of the civil-military relationship, civil control over the military. Rather, it is to present “agency theory as a worthy alternative to the reigning institutional paradigm of civil-military relations, Huntington’s model of civilian control.”<sup>237</sup> Toward this intent, Feaver demonstrates that Huntington’s model which predicted the military would work only under nonintrusive civilian monitoring is inaccurate. Feaver uses Cold War and post-Cold War cases to show that the military generally worked—in the narrow definition of

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<sup>236</sup> Perter D. Feaver, *Armed Servants*, *ibid.*, pp. 234-282.

<sup>237</sup> Perter D. Feaver, *Armed Servants*, *ibid.*, p. 283.

“work”—even when the military disagreed with civilian decisions and even under intrusive civilian monitoring.<sup>238</sup>

Power, control, obedience, and compliance in light of a “right to be wrong”—the core of the principal-agent framework and the subtext for all civil-military policy discourse—are necessary parts of the relationship between senior political leaders and their military subordinates. A variety of monitoring regimes, some intrusive and others not, are also necessary—as they are in every bureaucracy. In the sense of understanding how the civil and military bureaucracies interact and how principals get agents to comply with their directives, Feaver’s approach in *Armed Servants* is helpful.

If agency theory is to replace the reigning model, however, it will have to explain more than it does now. Ensuring compliance, while important, is but a small component of the civil-military relationship necessary to wage war. For example, by themselves, power, control, obedience, and intrusive monitoring inhibit, rather than encourage, the very dialogue that even Feaver recognizes is necessary to wage war successfully.<sup>239</sup> The relationship between the senior civilian and military leaders who wage war is more complicated than the principal-agent formulation: members of the military (agents) promise to risk their lives and civilian leaders (principals) promise to answer to the electorate for the consequences of any policy decisions.<sup>240</sup> These promises do not suffice with respect to war-waging responsibilities. Both senior political and military leaders have responsibility for the lives of citizens-who-become-soldiers that are used in war and

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<sup>238</sup> Peter D. Feaver, *Armed Servants*, *ibid.*, p.284.

<sup>239</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 8; Peter Feaver and Richard Kohn, editors, *Soldiers and Civilians: The Civil-Military Gap and American National Security* (Cambridge, Massachusetts: MIT Press, 2001), p. 469 and 473.

<sup>240</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 8.

for the lives of the innocent that are inherently at risk in war. Further, both share the responsibility as architects of strategy and policy and as those who execute their bureaucracies and adapt to war as it unfolds. The relevant difference is that senior political leaders have final decision authority whereas senior military leaders do not.

Feaver ends *Armed Servants* by saying “let civilian voters punish civilian leaders for wrong decisions. Let the military advise against foolish adventures, even advising strenuously when circumstances demand. But let the military execute those orders faithfully. The republic would be better served even by foolish working than by enlightened shirking.”<sup>241</sup> In this conclusion, Feaver is correct, but the republic would be best served by the kind of balance Huntington attempts to achieve in his “objective control model,” a balance which results in senior political leaders making war-waging decisions that are likely to lead to success. Compliance to orders is simply not enough; the substance of orders is also important. Justice in war demands more than compliance.

Gideon Rose, in *How Wars End*, makes a similar observation concerning the civil-military interactions during the Iraq war: “[Secretary of Defense Donald] Rumsfeld felt contempt...for the [defense] department’s conventional wisdom, and calmly set about bending the military to his will. His first order of business was to eliminate the Joint Chiefs of Staff as an independent source of authority. Then he stocked the hierarchy with officers who would follow his lead. And finally he took personal charge of the war planning process, demanding endless drafts and relentlessly pushing [General Tommy] Franks to deliver something that conformed to his [Rumsfeld’s] specifications....So most officers simply shelved whatever disapproval they may have felt and gave their boss what

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<sup>241</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 302.

he wanted.<sup>242</sup> Secretary Rumsfeld demonstrated power, established control, and received compliance but as Thomas White, the civilian Secretary of the Army during this period put it: ‘If you grind away at the military guys long enough, they will final say, ‘Screw it, I’ll do the best I can with what I have.’”<sup>243</sup> Jeffrey Record corroborates Gideon Rose’s appraisal in *Dark Victory: America’s Second War Against Iraq* by saying, “[Secretary] Rumsfeld...believed the Clinton administration had given the professional military too much latitude...and he was determined to reassert the authority of the Secretary of Defense.... ‘I want to reinstate civilian control of the military!,’ he roared during a meeting shortly after taking office.”<sup>244</sup>

Rose’s and Record’s description of the civil-military relationship and the decisions and actions that emerged from it accords with the principal-agent framework. The military “worked” because it did what the civilian leadership wanted, how they wanted it done, but the Iraq war lasted longer and resulted in more death, innocent and soldier, than it needed to in part because of this kind of relationship. In the end, the cost of the Iraq War was over 5000 U.S. killed; tens of thousands of U.S. wounded; even more Iraqi casualties—military, police, and civilian; and an estimated of \$1 trillion to the United States. A civil-military relationship based upon power and control, one that seeks compliance over outcome, is simply not one that will generate effective war-waging decisions and actions.

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<sup>242</sup> Gideon Rose, *How Wars End*, *op.cit.*, p. 266.

<sup>243</sup> Gideon Rose, *How Wars End*, *ibid.*, p. 267.

<sup>244</sup> Jeffrey Record, *Dark Victory*, *op.cit.*, p. 98.

Feaver admits that he “has paid relatively less attention...to how civilian control [as he posits it] might affect the ability of the military to carry out its functional role to defend and advance the national interest.”<sup>245</sup> But that’s just the point.

The Vietnam War and the Iraq War cases show that it’s no more possible to understand war-waging responsibilities using power, control, obedience to a right to be wrong, and intrusive monitoring to achieve compliance without reference to outcomes than it is to understand a professional sport using the internal dynamics of a sports team and the team’s relationship to management without reference to scoring. Agency theory cannot be a “worthy alternative” to Huntington until it includes an analysis of the functional imperative.

Civilian control of the military remained intact throughout the Vietnam War, but the functional imperative—effectiveness—suffered and tens of thousands of lives were used for no worthy purpose. Of course, winning the war but losing civil control would be a worse outcome. Huntington’s central idea concerning the two imperatives, however, was not to take an either/or approach; rather, it was to get the balance right: have a military instrument capable of successfully protecting the nation while remaining subordinate to civil authority. The principal-agent framework, at least as far as it goes in *Armed Servants*, emphasizes the social imperative over the functional and in doing so diminishes, even masks, a significant portion of the war-waging responsibilities of senior political and military leaders. If in some future study Feaver takes up an analysis of the effect of agency theory on the functional imperative, he will have to explain not only how civilian control affects the military’s responsibilities for tactical, war-fighting functions

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<sup>245</sup> Peter D. Feaver, *Armed Servant*, *op.cit.*, p. 298.

but also how it affects the strategic, war-waging functions that senior political and military leaders share.

### **Implications for *jus in bello* war-waging responsibilities.**

Perhaps one day Feaver or others will take up the task of completing an analysis of the principal-agent framework to determine its effect on the functional imperative. In the meantime, the question relative to just war theory is whether, or to what extent, the framework presented in *Armed Servants* can illuminate understanding senior political and military leaders' *jus in bello* war-waging responsibilities. This question is a legitimate one even if Feaver himself does not ask it.

The principal-agent framework is helpful to understanding war-waging responsibilities in several ways. First, the principal-agent framework addresses the second war-waging responsibility by explaining at least part of what is required to translate decisions concerning war aims, strategies, and policies into action. Monitoring regimes—intrusive, non-intrusive, or some combinations of both—agency theory points out, are necessary to make sure execution stays aligned with decisions. Such monitoring will be necessary both for military and non-military bureaucracies because war aims cannot be achieved through military means alone.

Secondly, the principal-agent framework corroborates the necessity of robust civil-military dialogue as the means to identify war aims, strategies, and policies—even as the framework's own structure, as will be seen below, inhibits the very dialogue it finds necessary.

Finally, the framework identifies the necessity of civil primacy. While seeking to provide a descriptive account of how the relationship between senior political and military leaders actually does work, *Armed Servant's* goes on to say that democracy is “better served even by foolish working than by enlightened shirking.”<sup>246</sup> Such a statement is unfounded, for descriptive accounts alone cannot provide the basis for normative claims. Democracies require that elected leaders, as opposed to military officers, have final decision authority and retain ultimate control of the military. The tri-partite tension in the war-waging dimension of *jus in bello*, therefore, should be amended to so state.

To account for civilian final decision authority and ultimate control as an aspect of the tension inherent in waging war, the tri-partite tension as presented in Chapter 2 must be adjusted. The first two elements can stand as stated: first, set war aims and make strategy and policy decisions that increase the probability of being right, or at least less wrong than those one is fighting; second, translate those decisions into action to achieve war aims at the least cost, in lives and resources, and least risk to one's political community then adapt decisions and actions as the war unfolds. The third, however, must be changed to read: do all of the foregoing while observing the war convention; maintaining legitimacy, public support of the war effort; and maintaining proper subordination of the military to civilian leadership.

These three contributions to understanding the war-waging responsibilities of senior political and military leaders, however, are accompanied by four areas that prevent the principal-agent theory from providing an adequate foundation for *jus in bello's* war-

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<sup>246</sup> Peter D. Feaver, *Armed Servant, ibid.*, p. 302.

waging responsibilities. First, the internal dynamics set in motion by power, control, obedience to a “right to be wrong,” and intrusive monitoring can obstruct the very dialogue necessary to wage war. Second, compliance monitoring inhibits adapting initial decisions to the changing realities inherent in war. Third, because the economic-based principal-agent framework leaves out other aspects of the relationship between citizens-who-become-soldiers and their government, soldiers’ lives are treated as if they had less value than they actually have. Finally, the civilian “right to be wrong” is too absolutely stated to be a useful guide in the conduct of war. Each of these shortcomings will be taking up in turn.

First, the internal dynamics set in motion by power, control, obedience to a “right to be wrong,” and intrusive monitoring can obstruct the very dialogue necessary to wage war.

The kind of dialogue necessary to properly execute war-waging responsibilities, one that both *Armed Servants* and *Soldiers and Civilians* describe as necessary, is unlikely to emerge from people in a work relationship based upon solely, or even primarily, upon power and control and where “work” is defined as doing what the civilian leadership wants done, how it wants it done.

Every work relationship has an economic dimension to it, and every work relationship has power and control dimensions. But over-emphasizing power, control, and economics, and overly narrowing the definition of “work” can distort one’s understanding of a proper work relationship. Such over-emphasis as the primary basis for their relationship with employees and subordinate leaders is more likely to establish a toxic work environment than one in which employees feel free to voice their opinions and contribute to success of the enterprise.



President Johnson, known for his ability to establish power and control over those with whom he interacted, certainly did so with his military advisors. For example, in early November 1965, the Joint Chiefs of Staff requested a meeting with the President to discuss how the war was being fought. This was, in the words of one attendee, “to be the meeting to determine whether the U.S. military would continue its seemingly directionless Vietnam buildup to fight a protracted ground war or take bold measures designed to bring the war to an early, favorable conclusion.”<sup>247</sup> The President “did not offer his guests a seat” and after “only a few minutes...attacked them in the most vile and despicable terms, cursing them personally, ridiculing their advice, using the crudest and filthiest language.”<sup>248</sup> The result, not just of this single incident but of an environment set by the President and his Secretary of Defense in which control was paramount, was not an open dialogue which produced strategies and policies with a reasonable probability of success. Rather, it was one that “did not permit a candid assessment of the situation or evaluation of possible American actions designed to influence it,” and one that created a relationship in which “the president remained ignorant of the Chief’s opinions, and the Chiefs remained ill-informed of the direction in which the administration’s Vietnam policy was headed.”<sup>249</sup> It was a classic toxic environment.

Secretary Rumsfeld’s desire to assert civilian control and the authority of the office of the Secretary of Defense over the Joint Chiefs and Services had similar results. “Long before Operation Iraqi Freedom, even before 9/11,” writes defense analyst Jeffery Record, “civil-military tensions inside the Pentagon were running higher than perhaps at

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<sup>247</sup> Lewis Sorely, *Honorable Warrior: General Harold K. Johnson and the Ethics of Command* (Lawrence, Kansas: University Press of Kansas, 1988), p. 222.

<sup>248</sup> Lewis Sorely, *Honorable Warrior, ibid.*, p. 222-223.

<sup>249</sup> H.R. McMaster, *Dereliction of Duty, op.cit.*, pp. 61, 89, and 325.

any time since the reign of Robert McNamara [President Johnson's Secretary of Defense during the Vietnam war], who, like Rumsfeld, was an abrasive, assertive, exceptionally self-confident man who was not afraid to impose his views on the professional military."<sup>250</sup> Even President Bush, acknowledging Secretary Rumsfeld's strengths, admitted that "at times, Don [Rumsfeld] frustrated me with his abruptness toward military leaders and members of my staff."<sup>251</sup> The emphasis on establishing the power of the Office of the Secretary of Defense and control over the military resulted in a "Broken Dialogue," according to Matthew Moten.<sup>252</sup> The broken dialogue ultimately affected planning for the Iraq war. "Rumsfeld's insistence on controlling every detail exacerbated their [the Joint Chiefs] concerns."<sup>253</sup> In the end, Moten concludes, Secretary Rumsfeld's action undermined the credibility of senior military officers and created a management style and an environment that cast subordinates as adversaries.<sup>254</sup>

Moten then contrasts Secretary Rumsfeld's approach with his replacement, Robert Gates, who "gained a reputation for honest consultation and listening to military leaders. He has not always accepted their advice, but he has not denigrated it either publicly or privately. Ironically, he proved far more willing to discipline his subordinates than Rumsfeld, firing a service secretary, relieving general officers, and accepting the retirement of combatant commanders, but that has done nothing to diminish his good

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<sup>250</sup> Jeffery Record, *Dark Victory*, *op.cit.*, p. 98.

<sup>251</sup> George W. Bush, *Decision Points*, *op.cit.*, p. 92.

<sup>252</sup> Matthew Moten, "A Broken Dialogue: Rumsfeld, Shinseki, and Civil-Military Tension," in *American Civil-Military Relations*, Suzanne C. Nielsen and Don M. Snider, editors (Baltimore, Maryland: The Johns Hopkins University Press, 2009), pp. 42-71.

<sup>253</sup> Matthew Moten, "A Broken Dialogue," *ibid.*, p. 54.

<sup>254</sup> Matthew Moten, "A Broken Dialogue," *ibid.*, p. 62.

reputation with the uniformed military, who respect leaders who maintain clear and consistent standards.”<sup>255</sup>

Power and control are absolutely a necessary element in the relationship between senior political and military leaders who wage war. When this power and control is asserted too quickly in a dialogue, is overused, or becomes the primary basis for the civil-military relationship, however, the result is counter-productive to war-waging responsibilities. Feaver’s focus on power and control is understandable given his aim of understanding how principals control their agents. Power, control, and the narrow definition of “work” alone, however, alone provide an insufficient foundation for a productive dialogue necessary for senior political and military leaders to exercise their war-waging responsibilities.

Second, compliance monitoring inhibits adapting initial decisions to the changing realities inherent in war. Compliance monitoring makes sure that the agent does what the principals wants done in the way the principal wants it done. Such monitoring is absolutely necessary when running any larger corporate endeavor. Compliance monitoring is also necessary in waging war. Senior political and military leaders both use compliance regimes in executing their war-waging responsibilities, but waging war also requires other forms of monitoring methodologies.

Compliance regimes are a natural fit within a principal-agent framework where “work” is defined as agents doing what principals want done how they want it done. They are also a natural fit for some aspects of waging war. In those areas where standards are

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<sup>255</sup> Matthew Moten, “A Broken Dialogue,” *ibid.*, p. 63.

fixed—for example, in determining the level of fiscal, personnel, contracting, and materiel accountability, or in monitoring logistical delivery times—compliance regimes are the perfect tool to use. These kinds of regimes do not question the standards; they only concern compliance with the standards. Strategies and policies, however, are not areas where standards are fixed.

Strategies and policies are relative to the war aims. If strategies and policies are not helping to achieve war aims, the question is not just whether military and non-military departments are complying with them. Rather the strategies and policies themselves need to be questioned. They are also relative to the enemy. If strategies and policies are having no effect or an insufficient effect on the enemy, continued compliance with them is rarely the proper action to take. Rather, the proper action is to question the strategies and policies themselves. Last, strategies and policies are relative to one's own capacities. A strategy or policy may be conceptually perfect, just what is needed to subdue the enemy and achieve war aims—in theory. Simultaneously, these theoretically perfect strategies and policies may be impossible to execute because one's military forces or non-military departments are incapable of actually doing what is called for by the strategy or policy. These cases require either change to military or non-military capacity or modification to strategies and policies so that they can actually be executed. Simply put, senior political and military leaders waging war need more than compliance monitoring regimes.

Chapter 5 will take this topic up more completely. At this point, suffice to say that the principal-agent framework's use of compliance regimes is understandable given its definition of “work.” Alone, however, compliance regimes are insufficient to execute

war waging responsibilities, for they offer little room in which to evaluate the substance of the strategies or policies that are being complied with or to determine whether the strategies or policies are the “right” ones.

Third, because the economic-based principal-agent framework leaves out other aspects of the relationship between citizens-who-become-soldiers and their government, soldiers’ lives are treated as if they had less value than they actually have. In its most stark form, an employer’s “job” in the principal-agent framework is to direct, monitor, and punish. This approach is understandable given the framework’s focus on explaining how, in the face of the two problems described below, principals get their agents to do what they want done, how they want it done. The direct-monitor-punish approach, however, is not the only aspect of the relationship that exists between senior political and military leaders.

The first problem is the adverse selection problem, “that the employer cannot know for certain about the true preferences and capabilities of the applicant.”<sup>256</sup> The second is the moral hazard problem which derives from the fact that the “employer (principal) wants to hire a diligent worker (agent), and once hired, would like to be certain that the employee is doing what he is supposed to be doing (working) and not doing something else (shirking). The employee...would like to be hired and so has an incentive to appear more diligent during the interview than he really is....Once hired...the employee has an incentive to do as little work as he can get away with all the while sending information back to the employer that suggests he is performing at an acceptable level.”<sup>257</sup> In the

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<sup>256</sup> Peter D. Feaver, *Armed Servant*, *op.cit.*, pp. 72-73.

<sup>257</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, pp. 54-55.

principal-agent framework, these two problems play out throughout the civil-military context.<sup>258</sup> On one hand, these two problems innocently describe some of the behaviors inherent in any work force. On the other hand, Feaver introduces an analogy—that the civilians within the Office of the Secretary of Defense and the service secretariats are to the military as police patrol officers are to a community—that is not so innocent. Civilian-principal employ “police patrols,” according to *Armed Servant*’s, as a form of intrusive monitoring that are “designed to turn up evidence of agent wrongdoing.”<sup>259</sup> In one sense, Feaver is merely identifying a best management practice: put in place audit mechanisms to ensure systems and processes are running as intended and to deter employees who might be tempted to subvert the system or process or to use it to their advantage. But police look for criminals and prevent crime, and in this sense, the term Feaver uses suggests something more than deleterious than routine management.

In any work environment, a percentage of employees engage in wrongdoing. Such knowledge requires employers to have proper policies accompanied by adequate monitoring and enforcement mechanisms.<sup>260</sup> Common best business practices, however, show that if an employer wants to create a positive work environment and, thereby, increase the probability of success in the enterprise of the business, that employer does not base his or her employer-employee relationship on the minority of employees who are involved in wrongdoing. If all Feaver meant by the analogy was that employers must be on the lookout for wrongdoing as they monitor the efficiency and effectiveness of their organizational systems, his observations would be benign. His claim is stronger. He

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<sup>258</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, pp. 72-78, 83-88, 95, 286, and 318-19.

<sup>259</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 83.

<sup>260</sup> The statistics of two studies are revealing: <http://www.investigation.com/press/press4.htm>, and <http://www.statisticbrain.com/employee-theft-statistics/>.

says, “In the civil-military context, an important indicator of police patrol monitoring is the size of the civilian secretariat of the Office of the Secretary of Defense and the service secretariats. These are extension of the executive branch principals, the patrol officers....large numbers of civilian officials are evidence of a police patrol monitoring mechanism.” Here, he clearly equates the size and purpose of the defense department’s staff with “police patrols...[that are] designed to turn up evidence of agent wrongdoing.”

<sup>261</sup> The staff has many more purposes than that.

The senior political and military leaders responsible for waging war require an approach more in line with common best business practices. These senior leaders need Inspectors General, internal and external auditing organizations, and other ombudsman like agencies to help them run the large organizations for which they are responsible. Each helps ensure that the systems of a leader’s organization are running properly. Each helps ensure that subordinates have avenues to voice concern outside the regular chain of command. Further, one of the important roles of the inspector general is the protection of civilian and uniformed employees, making sure they are treated well and provided the care and support that law and regulation mandate. There are separate criminal investigation agencies that attend to illegal behavior when such behaviors arise. By narrowing the analysis aperture to power, control, the narrow definition of “work,” and the direct-monitor-punish model, the principal-agent framework misses important dimensions of the phenomena it intends to explain.

Citizens-who-become-soldiers are the people whose lives senior political and military leaders will use in war. Direct, monitor, and punish may be part of a leader-employer’s

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<sup>261</sup> Peter D. Feaver, *Armed Servant*, *op.cit.*, p. 83.

responsibility, but these three factors cannot suffice. Respect for those whose lives will be used in war demands more. Citizens-who-become soldiers remain human beings, and the value of their lives must be respected. The tactical aspects of this respect are demonstrated, in part, through a military chain of command providing the soldier with what he or she needs in terms of training, equipment, supplies, life support, leadership, and just treatment. Further, respect for the lives of citizens-who-become-soldiers is the reason why Walzer introduces the requirement to balance due care to non-combatants with the due risk that can be expected of soldiers.

This respect for the value of soldiers' lives is also manifested through the decisions and actions taken by the senior civilian and military leaders who are responsible for waging war. First, if all senior leaders do is direct, monitor, and punish—rather than interact with their subordinates as human beings, seeking their input, eliciting their opinions, and explaining orders or directives—those leaders are disrespecting subordinates at an individual level. Disrespect can take on a second dimension, however. If, in treating subordinates merely as items to be ordered, monitored, and punished if they don't do what they were told as they were told to do it, senior leaders develop an attitude toward subordinates that fails to take their lives into consideration in ways a valuable human life deserves. The potential for an organizational or systematic disrespect, therefore, emerges. Ultimately, the result may be foolish policies, overly dangerous strategies, or poorly conceived campaigns where citizens-who-become soldiers are killed or injured needlessly.

The senior civilian and military leaders who are responsible for waging war have more than direct, monitor and punish responsibilities. They have responsibilities that derive



from respecting the lives of citizens-who-become-soldiers. The first of these is, of course, not to force citizens to fight in illegal or unjust wars—a *jus ad bellum* responsibility. Walzer makes this point and declares it a responsibility of political leaders.<sup>262</sup> Walzer also describes a second responsibility to prevent even just wars from turning into crusades—a *jus in bello* responsibility to stop the fighting once a just war has attained its aims, or its aims are within political reach.<sup>263</sup> Walzer is not exactly clear as to whose responsibility this is, but this responsibility is descriptive of the civil-military decision that ended the 1990 Gulf War.

A small group of civilian and military leaders discussed the war's end with President George H. W. Bush. Colin Powell, then the Chairman of the U.S. Joint Chiefs of Staff, wrote that as he sensed the end of the Gulf War was near, he called General Norman Schwarzkopf [then the Commander of U.S. Central Command responsible for military operations during the war] to get his sense of the situation. One advisor said that the United States does not want to be seen fighting beyond “the rational calculation;” similarly, another commented that America did not want to be seen as “killing for the sake of killing.” When the President spoke to the nation, he said, “Kuwait is liberated. Iraq’s army is defeated. Our military objectives are met....I am pleased to announce that at midnight tonight [February 28, 1991], eastern standard time....all U.S. and coalition forces will suspend offensive combat operations.”<sup>264</sup> President Bush held the

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<sup>262</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, pp. 21-32 and 287-296.

<sup>263</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p.110.

<sup>264</sup> Colin Powell, *My American Journey* (New York: Random House Large Print, 1995), pp. 790-797. See also George Bush and Brent Scowcroft, *A World Transformed: The Collapse of the Soviet Union, the Unification of Germany, Tiananmen Square, and The Gulf War* (New York: Alfred A. Knopf, 1998), pp. 480-492; Michael R. Gordon and General Bernard E. Trainor, *The General's War: The Inside Story of the Conflict in the Gulf* (New York: Little, Brown and Company, 1995), pp. 400-403; Lawrence Freedman and

responsibility for making the final decision, but a wider set of civilian and military leaders shared the responsibility to ensure the President's decision was a good one. What both the President and his advisors had in mind was doing all they can to use the lives of soldiers justly and wisely and to avoid unnecessary risk to the innocent.

The third responsibility is to treat citizens-who-become-soldiers with the dignity and respect—individually and organizationally—that they deserve as human beings. American citizens-who-become-soldiers do have their individual right to life changed or infringed or abridged vis-à-vis the enemy, but not vis-à-vis their own government. At the higher level, senior civil and military leaders have responsibilities to their citizens-who-become-soldiers. They should not knowingly use the lives of citizens-now-soldiers foolishly or in stupid ways. Senior political and military leaders may make mistakes and err in their judgments and directives. They cannot, however, do so knowingly or callously. “The institution of rights against a government,” Dworkin points out, “is not a gift of God, or an ancient ritual, or a national sport. It is a complex and troublesome practice that makes the Government's job of securing the general benefit more difficult and more expensive.”<sup>265</sup>

Citizens-who-become soldiers certainly learn quickly that military life involves its share of foolishness and stupidity. They also learn that their lives could well be put at risk as a result of some foolish, stupid, or dumb order. But unless such orders are the exception, not the rule, military discipline will break down—and very quickly. At the tactical level, discipline is maintained, contrary to conventional wisdom, because the

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Efraim Karsh, *The Gulf Conflict, 1990-1991: Diplomacy and War in the New World Order* (Princeton, New Jersey: Princeton University Press, 1993), pp. 403-404.

<sup>265</sup> Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Massachusetts: Harvard University Press, 1978), p. 198.

“rule” is that orders are reasonable given the circumstances, likely to contribute to mission success, and likely to contribute to self preservation. Within tactical units, soldiers often argue among themselves and with their leaders—sergeants and officers—as to what’s “smart” in a particular case. Soldiers in well-led, disciplined units expect to be heard and listened to; they expect reasoned leadership and orders, not foolish, stupid, or dumb orders handed out by an authoritarian whose only rationale is “to demonstrate that I’m in charge” and who treats them as objects, not persons. These are among the ways that a soldier rights are respected at the tactical level. Soldiers also expect that the various echelons in their chain of command—all the way up to the senior political and military leaders who identify war aims, strategies, and policies—see to it that they are respected in these ways. By becoming a soldier, a citizen’s life can be used. It should not, however, be wasted, treated callously, or used in vain—whether by leaders at the tactical or strategic level.

Again, a direct, monitor, and punish approach is understandable within a principal-agent framework with a focus on explaining how principals get their agents to do what they want done, how they want it done. Alone, however, such an approach cannot provide an adequate foundation for the war-waging responsibilities of senior political and military leaders. The citizens-who-are-now-soldiers, those whose lives are literally on the line, deserve better and justice in war demands better.

Finally, the civilian “right to be wrong” is too absolutely stated to be a useful guide in the conduct of war. Feaver claims that the “right to be wrong” is necessary in a

democracy.<sup>266</sup> In such a claim, he is correct in this sense: Civilian leaders in a democracy are responsible for making the final decisions concerning the war-waging responsibilities associated with war aims, strategies, and policies. Senior military leaders are, and must be, subordinate to this final decision authority. The democracy requires such, even when senior military leaders believe that war aims, strategies, and policies are “not the best” from their perspective.

Because the principal-agent framework is designed only to explain one aspect of the relationship between senior political and military leaders—how the senior political leader principals get their military subordinate agents to do what they want done how they want it done—the framework has only to assert the existence of the “right to be wrong.” But just as soldiers remain moral agents in combat, senior military leaders remain moral agents in the war-waging “boardroom.” Simple obedience is not the standard for soldiers and their leaders on the battlefield, and it cannot be the standard for senior military leaders in the “boardroom.” Justice in the conduct of war, therefore, requires an understanding of the right to be wrong<sup>267</sup> and of what is involved in civilians “claiming the right to be wrong”<sup>268</sup> deeper than “civilians have it and the military does not.”

In *Soldiers and Civilians: The Civil-Military Gap and American National Security*, Feaver reports that “emerging norms within the [American] officer corps promise more friction in civil-military relationships.”<sup>269</sup> According to the surveys, the friction comes from a growing number of mid level officers who show “some reluctance to accept one of the basic assumptions: that civilian leaders have a right to be wrong....military officers

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<sup>266</sup> Peter D. Feaver, *Armed Servant*, *op.cit.*, p. 65.

<sup>267</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, pp. 6, 171, and 177.

<sup>268</sup> Peter D. Feaver, *Armed Servant*, *ibid.*, p. 8.

<sup>269</sup> Peter Feaver and Richard Kohn, editors, *Soldiers and Civilians*, *op.cit.*, p. 464.

now believe that it is their role to insist rather than merely advise or advocate in private, on key decisions, particularly those involving the use of force.”<sup>270</sup> These beliefs, Feaver and Kohn claim, identify a new civil-military norm in which mid-grade officers imply that “while their leaders should not be openly insubordinate, they may, indeed sometimes should, resist civilian direction or even resign in protest of civilian policies.”<sup>271</sup> Such a norm, Feaver and Kohn conclude, has “already caused real friction...and could lead to real trouble.”<sup>272</sup>

The normative implication is clear: best not to deviate from the principal-agent “right to be wrong” norm because such deviation may place the social imperative at risk. A different conclusion might also be drawn, however. The views expressed by the mid-level officers may not challenge the principle of civilian control. Rather the mid-level officers are expressing concern over the duties of their military seniors during the civil-military dialogue necessary to exercise, responsibly, their shared war-waging duties. Further, they point to an important moral question: is there a limit to the obedience senior military officers owe their political masters? This question strikes at the heart of the basic assumption of the principal-agent framework.

The “right” in “right to be wrong” cannot be a universal right, a right that any civilian, on any topic, and under any conditions can claim against any member of the military. Rather the “right to be wrong” is a limited to some civilians, on some topics, and at some times. This limited set of people can claim the “right to be wrong” against some members of the military. That is, senior military leaders ought to obey the final decisions of those

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<sup>270</sup> Peter Feaver and Richard Kohn, editors, *Soldiers and Civilians*, *ibid.*, pp. 464-65.

<sup>271</sup> Peter Feaver and Richard Kohn, editors, *Soldiers and Civilians*, *ibid.*, p. 468.

<sup>272</sup> Peter Feaver and Richard Kohn, editors, *Soldiers and Civilians*, *ibid.*, p.465.

senior political leaders who have the authority to declare war (or direct other uses of military forces) and employ military forces in it, even in situations where military leaders disagree with the decisions.

Clarity in identifying who can claim this right is not a trivial matter. The President and the Secretary of Defense, for example, can use Constitutional and legal grounds to claim this right. The Constitution identifies the President as the Commander-in-Chief.<sup>273</sup> The Secretary of Defense can also claim the “right to be wrong.” By statute, the Secretary of Defense has the authority, direction, and control over the Department of Defense; is the principal assistant to the President in all matters related to the department; and is in the chain of command, thus exercises command and control over all U.S. military forces for both operational and administrative purposes.<sup>274</sup> Conceivably, the principals of the U.S. National Security Council, when speaking on behalf of the President may be legitimate claimants to this right.<sup>275</sup> With respect to the executive branch, however, beyond this small circle, claiming to have the “right to be wrong” becomes problematic.

The validity of subordinates and staff of principals making a claim to the “right to be wrong” would be situational. On one hand, some principals communicate through their

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<sup>273</sup> Article II, Section 2, U.S. Constitution. Jethro K. Lieberman, *The Enduring Constitution: A Bicentennial Perspective* (New York: West Publishing Company, 1987), p. 455.

<sup>274</sup> 10 U.S. Code 113, 162, 3011, 5011, and 8011.

<sup>275</sup> The National Security Council is chaired by the President. Its statutory members, in addition to the President, are the Vice President and the Secretaries of State and Defense. The Chairman of the Joint Chiefs of Staff is the statutory military advisor to the Council, and the Director of Central Intelligence is the intelligence advisor. The Secretary of the Treasury, the U.S. Representative to the United Nations, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic policy, and the Chief of Staff to the President are invited to all meetings of the Council. The Attorney General and the Director of the Office of National Drug Control Policy attend meetings pertaining to their jurisdiction; other officials are invited, as appropriate.

[http://clinton4.nara.gov/WH/EOP/NSC/html/NSC\\_Membership.html](http://clinton4.nara.gov/WH/EOP/NSC/html/NSC_Membership.html).

subordinates and staff as a matter of efficiency. On the other hand, staffs, and sometimes even senior deputies, are notorious for saying that they speak for a principal in cases where they do not. Similarly, there are situations where one might question whether even a Vice President can speak for the President and, therefore, claim the right to be wrong. Vice Presidents Truman and Johnson, for example, relative to Presidents Roosevelt and Kennedy were in different positions than was Vice President Cheney relative to President Bush. A common behavior in large bureaucracies like those of the U.S. federal government is for staff or deputies to wield power *as if* they had it. Such behavior is a bureaucratic means to extend one's influence and power, but it is not a legitimate claim to the "right to be wrong."

The legislative branch may also have Constitutional grounds to claim this right,<sup>276</sup> but this claim differs from that in the executive branch. No single member of Congress—unless events trigger the statutory presidential succession—would be able to claim the right because none has the authority to issue orders. Congress as a body, however, has authorities related to raising and funding military forces and operations as well as declaring war and authorizing the use of military forces. These authorities are extensive, important, and related to the war-waging responsibilities of identifying war aims, strategies, policies, and military campaigns. In 1975, for example, Congress did not authorize the funding necessary to execute President Nixon's strategy in Vietnam. Thus, American military support was not employed to assist the South Vietnamese in resisting North Vietnam's 1975 final military offensive. This Congressional action could be understood as a Legislative Branch's claim to the "right to be wrong."

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<sup>276</sup> Article I, Section 8, U.S. Constitution. Jethro K. Lieberman, *The Enduring Constitution*, *op.cit.*, pp. 452-53.

Feaver provides no detailed discussion about who may claim the right to be wrong, saying merely “civilians have a right to be wrong.” The reality is that this right can be claimed only by a small subset of civilian political leaders in identifiable executive branch positions and by the legislature acting as a body. For practical reasons, this is an important circle to draw; no civilian outside this circle as a proper claim to the “right to be wrong.” Clarifying the scope of who can legitimately claim the “right to be wrong,” suggests that this right is better understood as a positional duty similar to Walzer’s account of the responsibilities of officers, that is, duties and obligations which apply “only to those who have consented, promised, or come to occupy a relevant role.”<sup>277</sup>

Similarly, Feaver says nothing about when the “right to be wrong” can be responsibly used. Certainly an authorized senior civilian leader can use the right after extensive consideration of the facts of a situation, the alternative courses of action and their potential costs, risks, and consequences. Even if, in the end, the senior political leader or set of leaders who make a final decision are mistaken or in error, the right can be said to have been used responsibly. Anyone can be wrong. No one is infallible. Even the most earnest decision maker and the most proficient bureaucracies err. This case is an example of responsibly claiming the “right to be wrong,” and is, therefore, uncontroversial. It would be similarly uncontroversial to have heated debate prior to making a decision that is ultimately proven to be mistaken. Such debate, however heated, is expected as part of the well developed decision making process.

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<sup>277</sup> Alan Goldman, *The Moral Foundations of Professional Ethics* (Totawa, New Jersey: Rowan and Littlefield, 198), pp. 3-9, 290; James Fiskin, *The Limits of Obligation* (New Haven, Connecticut: Yale University Press, 1982), pp. 26-27.



There are controversial cases, however. What if a senior civilian leader or set of leaders claim the right relative to a decision that the battlefield has already been proven to be mistaken and wasteful of the lives? Cases like this, where the decision in questions is known—or reasonably can be known—in advance, to be foolish, stupid, dumb, and wasteful are different from mistakes of an earnest decision maker. There could be even more controversial senses than repetitive foolishness, stupidity, and wastefulness. For example, what if the final decision was to promulgate a policy that limited distribution of bullets to three per soldier per day as a means to reduce the cost of the war and limit civilian casualties, even during active and heavy combat? Certainly, the right could be claimed in either of these cases, but such a claim would be controversial since it would not be claimed responsibly.

Clearly every senior leader, civilian and military, involved in the discussions of decisions concerning known foolishness, extreme stupidity, or avoidable waste would argue strenuously against such a decisions. Further, no actual leader would likely ever direct anything like known stupidity, extreme foolishness, or avoidable wastefulness. What makes cases like these important, however, is that they illustrate limits to when the “right to be wrong” can be reasonably claimed. They illustrate that the “right to be wrong” is a strong right in way Dworkin uses it in *Taking Rights Seriously*. “In most cases,” Dworkin says, “we say that someone has a ‘right’ to do something, we imply that it would be wrong to interfere with his doing it, or at least that some special grounds are need for justifying any interference.”<sup>278</sup> It would be wrong for military or civilian leaders to interfere with the responsible exercise of “the right to be wrong” as explained in the

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<sup>278</sup> Ronald Dworkin, *Taking Rights Seriously*, *op.cit.*, p. 188.

uncontroversial cases. But are there special grounds in the controversial cases of justified interference with a civilian leader's "right to be wrong" as *Armed Servant's* principal-agent framework understands that right?

Military leaders, as well as subordinate civilian leaders, must work to attain war aims, and execute strategies and policies that emanate from proper authorities, even if those leaders disagree with either the decision making process or the outcome. A democracy must insist upon this. Disagreement voiced prior to a decision being made does not constitute interference. Military leaders are not to execute illegal or immoral strategies or policies, ones requiring genocide, or torture, or indiscriminate killing of noncombatants, for example. The extreme cases of known, repetitive, or extreme foolishness or stupidity and avoidable waste, however, suggest that some decisions may cross a line separating honest mistakes in matters of prudence, on one hand, and immoral directives and decisions because they reflect recognized or sustained foolishness and prolonged stupidity, on the other.

War-waging decisions inherently involve using lives. Respect for the value of those lives, whether of the innocent or of citizens-who-become-soldiers, places a responsibility on those making such decisions. The responsibility is to make the best decisions possible given the known and knowable facts, the realities of a particular situation, and the competing perspectives that must be considered. This responsibility is a positional responsibility attendant upon those who can legitimately claim "the right to be wrong." Waging war is also about recovering from honest mistakes as quickly as reasonably possible. Citizens expect their senior political and military leaders to wage war as wisely and prudently as possible. This expectation is founded upon a government's

responsibility to respect and value the lives of its citizens-who-become-soldiers. That this expectation that was not met during the Vietnam War was part of the outrage that followed the publication of the Pentagon Papers.<sup>279</sup>

Interference is not understood as senior political or military leaders trying to prevent making a foolish decision relative to war aims, strategies, or policies. It would not be interference, for example, to convince a final decision authority that a previous decision which had been executed was proven to be ineffective or that the three bullet policy is foolish in the extreme and would use lives irresponsibly.

Certainly decisions can be mistaken, facts can be misunderstood, alternatives and be wrongly analyzed, consequences unforeseen, and risks not fully understood. Human beings and the organizations they create to assist in making decisions can always be mistaken. An enemy's plans are not usually known, and even when they are, plans are not always followed. Battle creates unforeseen opportunities and vulnerabilities for both sides. Friction and uncertainty reign supreme in war. So mistakes are common, even mistakes with tragic human consequences. These realities are the reasons for robust debates that precede initial war-waging decisions and equally robust arguments about subsequent war-waging adaptations.

Either because of chance or unforeseen enemy action, tragic consequences may occur even if one used the best decision-making processes and executed the most thoughtful strategies and policies in the best ways. Neither senior political nor military leaders can be absolutely sure of the efficacy of their own judgments, either at the start of a war or

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<sup>279</sup> The Pentagon Papers' official title was "Report of the Office of the Secretary of Defense Vietnam Task Force," commissioned by Secretary MacNamara in 1967 and leaked by Daneil Ellsberg to *the New York Times* in 1971. It is available at: <http://www.archives.gov/research/pentagon-papers/>.

during it. Both understand that they could be wrong. These leaders actually need each other, therefore, to argue and debate fully so as to prevent foolish, stupid, dumb, or wasteful decisions from being made. Further, American society expects such interaction between their senior political and military leaders; they expect extensive dialogue and argument to precede consequential decisions that affect the use of the lives of their sons and daughters, husbands and wives, mothers or fathers, or brothers and sisters. The absence of a robust dialogue is what should be upsetting, as Gideon Rose observed about the 2003 Iraq invasion: “A dysfunctional national security decision making process allowed the operation to proceed without serious questioning of heroically optimistic assumptions or proper contingency planning.”<sup>280</sup>

Contributing to debate, even heated ones that extend over months, is part of the war-waging responsibility of those senior leaders, political and military, who participate in the decision-making dialogue. En route to a final decision, both civilian and military leaders have a duty to provide their best advice, to make their best case, to challenge assumptions and predictions, and to present evidence and counterevidence as the debate ebbs and flows. The same duty applies to adapting, modifying, or reversing decisions made and executed because of the ever-changing realities of war. Responsible claims to the “right to be wrong” require debate and argument prior to decisions, and this seems to be what the mid level officers in the Feaver and Kohn surveys may be suggesting. They expect their seniors, the military leaders who participate in strategy and policy discussion, to argue forcefully so as not to get into a position where disobedience or interference becomes the only option. Moreover, they expect their seniors to represent them and their

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<sup>280</sup> Gideon Rose, *How Wars End*, *op.cit.*, p. 239.

soldiers—the ones who have to execute on the battlefield—and argue forcefully and completely before foolish, stupid, or potentially wasteful orders, directives, strategies, policies, or military operations are set in motion. If this is what the mid-level officer meant by “insist” or “resist”, then all this is normal; none of it constitutes interference with the “right to be wrong.”

Rather, interference with the “right to be wrong” is understood as senior political or military leaders interfering with the execution of final decisions—after they have been made. One form of interference in this sense is akin to saying, “No; I (or we) will not do that.” A second form of interference involves duplicitous behavior, saying one will comply but either subverting the decision or doing what one wants whether it conforms to the decision or not.

The second form of interference is impermissible. Whether the duplicitous behavior involves leaks that limit or close down on going debates thus foreclosing a decision before it even gets proper consideration, or “slow rolling” execution so that the decision made does not get a fair evaluation, or issuing directives to one’s organization that are contrary to the decision made—all are disingenuous and disloyal at best. Some, depending upon the situation and consequences involved, may qualify for moral blame.

Two conditions are necessary before the first form of interference could be justified. First, the decision in question must be immoral not merely imprudent or disagreeable. Second, the interference must not challenge the ultimate principle of civilian control over the military. Certainly cases like this would be rare, for fulfilling both conditions would be difficult. It is not impossible to envision, however, a senior military leader who, after

participating fully in a robust debate and doing all he or she could to prevent a particular decision from being made, concludes that he or she cannot in good conscience obey the resultant order. That leader could resign quietly without “going public,” for a public act could challenge—or be perceived to challenge—civil control. It is also not impossible to envision a senior civilian leader resigning under the same circumstances, and being a civilian, his or her resignation would not challenge civil control.

Resignation of a senior official, even if not public, would interfere with the execution of a decision at the very minimum because of the temporary pause before execution that would likely result. No administration would move forward on a substantive war-waging decision if a Secretary of Defense or State, or a National Security Advisor, or four-star general or an Ambassador serving in a war zone would resign over a moral issue he or she had with that decision—even if the resignation was quietly done. Rather, an administration would be more likely to delay the decision or its execution until it was satisfied that, when the resignation and its reasons became known, the administration’s decision would stand public scrutiny. Such a delay qualifies as the first form of interference, interference after a decision was made. Further, even the potential resignation of a senior officer would have a significant and positive effect on the responsible use of the “right to be wrong.” Allowing for justified interference when both the immoral and non-threatening to civilian control conditions are met would have the practical effect of decreasing early or unreasonable exercise of the right. Justified interference, even if rarely used, would demonstrate that reasonable use of the right is as important as the right itself. Meeting both conditions would be difficult, but the

difficulty does not affect the importance of acknowledging possibility of justified interference.

The situation resulting from Secretary McNamara's testimony in August of 1967 shows how difficult it is to meet both conditions. In this testimony, McNamara claimed that America was winning the war in Vietnam. The Joint Chiefs were stunned according to Mark Perry's book *Four Stars*.<sup>281</sup> Perry explains that "McNamara's testimony broke the unofficial contract between civilian leaders and military officer that, by necessity, exists in every democratic society: members of the military pledge they will obey civilian authorities without questions, in return, civilian leaders pledge that those orders will not lead to the useless sacrifice of military life."<sup>282</sup> The Chiefs knew that it was impossible to win with the current U.S. strategy and policies and that there was no plan for winning the war. The Chiefs believed, writes Perry, "that to continue the war under current conditions would be immoral; it would lead to a useless sacrifice."<sup>283</sup> The Chairman said to the Service Chiefs that "he believed they should resign *en masse* during a press conference to be held the next morning."<sup>284</sup> Ultimately, although convinced of the righteousness of their conclusion, the Chiefs did not resign *en masse* for they believed doing so would be mutiny.<sup>285</sup> In effect, they knew they met the first condition but could not figure out how to meet the second. They also knew that they had no alternative to offer upon which they could all agree. Some form of justified interference appears to be necessary in order to preserve the moral agency of senior officials, military or civilian,

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<sup>281</sup> Mark Perry, *Four Stars: The Inside Story of the Forty-year Battles Between the Joint Chiefs of Staff and America's Civilian Leaders* (Boston, Massachusetts: Houghto Mifflin Company, 1989) p. 162.

<sup>282</sup> Mark Perry, *Four Stars*, *ibid.*, p. 162-163.

<sup>283</sup> Mark Perry, *Four Stars*, *ibid.* p. 163.

<sup>284</sup> Mark Perry, *Four Stars*, *ibid.* p. 163.

<sup>285</sup> Mark Perry, *Four Stars*, *ibid.* p. 165.

and to recognize that reasonable use of the right is as important as the right itself—even if the form of interference is as stringent and unlikely as described above.

Feaver and Kohn seem to realize that reasonable use of the “right to be wrong” is important when they say, “At the highest levels, civilians have to exercise their responsibility, appoint strong military leaders, listen to them, query them closely, advocate national defense policies, and nurture the effectiveness of U.S. military institutions. Military leaders must reciprocate with candid advice and loyal subordination.”<sup>286</sup> Here Feaver and Kohn seem to recognize that the “right to be wrong” must be understood and practiced somewhat differently than *Armed Servants* suggests. They seem to be acknowledging that responsible use of the “right to be wrong” requires some form of mutuality between senior political and military leaders. These leaders have correlative duties: military leader pledge loyal subordination and civilian leaders exercise their responsibility wisely. This formulation is akin to Perry’s unofficial contract and lies at the heart of the view that responsible use of the “right to be wrong” is as important as the right itself. Regardless, the foregoing discussion shows that the simple principal-agent formulation that civilians have a right to be wrong, by itself, is not a sufficient foundation for *jus in bello* war-waging responsibilities.

In sum, the principal-agent framework cannot provide an adequate foundation for the war-waging dimension of *jus in bello*. The principal-agent framework’s emphasis on power, control, the narrow definition of “work,” and a direct-monitor-punish regime—to the exclusion of other important dimensions to the civilian/principal/employer-to-military/agent/employee relationship—sets the conditions for obstruction to the kind of

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<sup>286</sup> Feaver and Kohn, *Soldiers and Civilians*, *op.cit.*, p. 473.



respectful dialogue necessary to wage war. Compliance monitoring alone, while necessary, is insufficient. Using the lives of citizens-who-become-soldiers places obligations on both tactical and strategic leaders that are not based solely on the economic-based principal-agent framework. Simply asserting the civilian “right to be wrong,” without adequate discussion of the scope of applicability or conditions under which this right is responsibly used, is an inadequate guide in the conduct of war. These four shortcomings do not act as a criticism of the principal-agent framework, for it never set out to provide the kind of framework *jus in bello*’s war-waging dimension needs. These four shortcomings do identify, however, elements that must be accounted for in whatever foundation for the war-waging dimension of *jus in bello* is finally adduced.

### **Conclusions: The Principal-Agent framework, not enough.**

Neither the stark line that Walzer drew between political leaders who are responsible for war itself and the military leaders who are responsible for the conduct of war, nor the sharp subordination of military agent-employees to their civilian principal-employers adequately describes how war is actually conducted at the higher levels. Walzer’s account is inadequate because it leaves out all together a discussion of senior political and military leader responsibilities in the conduct of war—that is, their war-waging responsibilities. The principal-agent framework acknowledges senior political and military leader responsibilities and recognizes the conduct of war’s war-waging dimension, but this account is a narrowly focused framework that explains only how civilian principals get their military agents to do what they want, how they want it done.

The working relationship between civilian/principal/employer and military/agent/employee does have economic and compliance components, but it also involves much more. An over-focus on one narrow aspect of the relationship can obscure the other elements involved and lead to misunderstanding the totality of what waging war is all about. In sum, the principal-agent framework is helpful, but its utility is limited as a foundation for war-waging responsibilities.

Understanding senior political and military leader moral responsibilities in the conduct of war, their war-waging responsibilities, will require looking elsewhere. The next chapter investigates Eliot Cohen and his theory of the “unequal dialogue” from *Supreme Command: Soldiers, Statesmen, and Leadership in Wartime*.<sup>287</sup> “Working,” as will become clear, has a much more robust meaning for Cohen than it does for Feaver, and Cohen’s relationship between senior civilian and military leaders is much richer than the principal/employer-agent/employee relationship Feaver uses. Cohen’s account will provide a richer understanding of the moral issues of *jus in bello* issues associated with waging war at the highest levels, and therefore, become a necessary part of understanding the war-waging dimension of *jus in bello*. His account, however, will not be sufficient.

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<sup>287</sup> Eliot A. Cohen, *Supreme Command, op.cit.*

## Chapter Four:

### Argument, Debate, and Dialogue

This chapter uses Eliot Cohen's *Supreme Command: Soldiers, Statesmen, and Leadership in Wartime* to continue the search for a way to fill the gap in Walzer's account of *jus in bello*. The chapter summarizes then analyzes Cohen's position, a position that acknowledges the influence of the "normal theory" of civil-military relations—the theory that derives from Huntington's *Soldier and the State*, that is employed in Walzer's *Just and Unjust Wars*, and that Feaver's *Armed Servants* uses as its starting point—but rejects it because it frees political leaders of all real responsibility for the gravest decisions in war, and it does not conform to the reality of waging war.<sup>288</sup> Cohen's framework involves the idea of an "unequal dialogue" as an alternative to the "normal theory."

The analysis of Cohen's "unequal dialogue" will find that it is consistent with Walzer's rights-based theory; provides an adequate account of how senior leaders set and achieve war aims by making strategy, policy, and military campaign decisions that increase the probability of being right, or at least less wrong than those one is fighting; and insists upon observing the war convention and maintaining civil control of the military. In the end, Cohen's approach will have advanced the understanding of the tri-partite tension inherent in waging war and of the associated senior political and military leader responsibilities. Thus, Cohen's approach is a significant improvement over the

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<sup>288</sup> Eliot Cohen, *Supreme Command*, *ibid.*, pp. 5 and 13

principal-agent framework and provides much of what is necessary to fill the identified gap in Walzer's account of *jus in bello*. The account in *Supreme Command*, however, will be found incomplete for three reasons. First, his description of the "unequal dialogue" does not capture the full extent of the set of on-going dialogues that must be conducted to wage war. Second, his discussion is incomplete in its treatment of the conditions necessary for the dialogue he describes to work. Last, he does not discuss how decisions that result from the dialogue get translated into action—an important war-waging responsibility.

### **Cohen's unequal dialogue.**

Early in *Supreme Command*, Cohen explains that the very nature of war—an act of policy, a political instrument, the use of violence and force for political purposes—demands a collaborative, political-military effort.<sup>289</sup> For political and military leaders at the highest levels, there can be no neat bifurcation of duties as the "normal theory" suggests. In waging war, senior civilian and military leaders face, together, exceptional difficulties. The first difficulty concerns the stakes at risk. There are personal stakes, for example the political life and legacy of a President and the professional reputation of senior generals, which affect the relationship among leaders as well as the policy decisions that flow from that relationship. As important as these stakes may be, however, Cohen is clear that they are secondary. The ultimate stakes are these: the life of the political community, the lives of citizens-who-become-soldiers, the lives of the innocent,

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<sup>289</sup> Eliot Cohen, *Supreme Command*, *ibid.*, p. 10; Carl von Clausewitz, Michael Howard and Peter Peret, editors and translators, *On War*, *op.cit.*, pp. 75, 80-81, 86-87, 606, and 608.

and the destruction associated with every war. Second, there are difficulties resulting from the “unique and extreme” differences between the personalities, backgrounds, and experiences of political and military leaders. Third, the issues of waging war are far more complex than those faced in peacetime.<sup>290</sup> This complexity demands a collaborative, political-military effort, one that often will result in “furious” arguments and will be uneasy, even conflict-ridden. Political leaders who merely dictate military actions, Cohen shows, almost always end in folly.<sup>291</sup>

Cohen is identifying the war-waging responsibilities that are as much a part of conducting a war as are war-fighting responsibilities. Further, he is clear that these are co-responsibilities of senior political and military leaders—responsibilities tied to the nature of war and the stakes involved in war—even as he asserts, unequivocally, that the final decision authority rests with civil leaders.

Political leaders, Cohen explains, should make no apologies for putting military leaders under pressure, even severe pressure through repetitive interrogations, probings, and questionings. Similarly, military leaders should make no apologies for putting political leaders under pressure through repetitive discussion of plausibility, limits of force, likely consequences, and inherent risks. In waging war, aims, strategies, policies, and campaign plans are inexorably linked to execution. A blunt give-and-take between political and military leaders, Cohen maintains, highlights this linkage, for a proper dialogue ensures that the aims, strategies, policies, and campaigns decided upon can actually be carried out. Cohen believes that the give-and-take dialogue conducted by

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<sup>290</sup> Eliot Cohen, *Supreme Command*, *ibid.*, p.2.

<sup>291</sup> Eliot Cohen, *Supreme Command*, *ibid.*, pp. 7, 10, and 12.

senior political and military leaders occurs at the start of a war, sometimes even before a war starts, and continues throughout. The dialogue ensures that aims, strategies, policies, and military operations adapt as war conditions ebb and flow. This kind of tense dialogue, Cohen demonstrates, is necessary—not to assert domination or to clarify who is in control—but to arrive at the right outcome: identify the course of action most likely to succeed amid conditions of ambiguity and conflicting options.<sup>292</sup> In sum, therefore, Cohen’s discussion directly addresses the first senior political and military leader war-waging responsibility—to identify war aims, strategies, and policies with the highest probability of success—and part of the second—to adapt initial decisions to the changing realities of war as they unfold.

Cohen uses four historical examples—the American Civil War, World Wars I and II, and the War for Israeli Independence—to show that the best assurance against using lives wastefully, putting one’s political community at risk, or against any of the other risks inherent in the conduct of war, are streams of decisions amid opposing advice and sharp disagreements that emerge in long, sustained, interlocked arguments. Political and military leaders improve the war-waging decisions they must make through incessant, close, difficult questioning of positions, assumptions, and suggested courses of action.<sup>293</sup>

This kind of dialogue is, according to Cohen, a “dark form of wisdom” necessary in war, for neither political nor military leaders can claim that they are most likely right

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<sup>292</sup> Eliot Cohen, *Supreme Command*, *ibid.*, pp. 77, 108, 111, 206, and 208-209.

<sup>293</sup> Eliot Cohen, *Supreme Command*, *ibid.*, pp. 77, 108, and 118.

when it comes to the complexity of waging war.<sup>294</sup> The truth is that everyone, senior political and military or leader alike, is more or less wrong, or can be.

Clausewitz addresses the complexity and difficulty of war-waging decision in *On War*. There, he defines the “essence of genius” as referring to “a very highly developed mental aptitude for a particular occupation.”<sup>295</sup> The harmonious combination of characteristics that Clausewitz describes in his chapter “On Military Genius,” however, seems more appropriate to an ideal or theoretical construct than any real person.<sup>296</sup> Hence, Cohen calls his penultimate chapter, “Leadership Without Genius,”<sup>297</sup> that is, the leadership that recognizes that those responsible for waging war cannot count on a genius being available at exactly the right time and place. Cohen goes on to argue that the reality is that good war-waging decisions are most likely to emerge from a set of political and military leaders bluntly and continuously arguing with one another in an attempt to identify strategy, policy, and organizational solutions to the complex and dynamic problems they face. In the principal-agent framework, obedience is what matters most not the content of orders and directives; in Cohen’s account, content matters significantly.

In *Supreme Command*, Cohen describes a process, the “unequal dialogue,” that demands more of the senior political and military leaders who wage war than direct, monitor, and punish. The outcome of the unequal dialogue, while insisting upon a political leader’s final decision authority, is aimed at achieving prudence in waging war, even if achieving a prudential outcome requires moral courage of the senior political and military participants. Cohen’s approach requires senior political and military leaders to

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<sup>294</sup> Eliot Cohen, *Supreme Command*, *ibid.*, p. 211.

<sup>295</sup> Carl von Clausewitz, *On War*, *op.cit.*, p. 100.

<sup>296</sup> Carl von Clausewitz, *On War*, *ibid.*, pp. 100-112.

<sup>297</sup> Eliot Cohen, *Supreme Command*, *op.cit.*, pp. 173-207.

argue strenuously until they can find an alternative to something as morally repugnant as sending citizens-who-become-soldiers to a war that the leaders know cannot be won in the way it is being waged—as they did in Vietnam for years. He is not advocating what Feaver calls shirking—not executing a final decision, or executing as a “slow roll.” Rather, the “complicated and tense” unequal dialogue demands that senior political and military leaders hold each other accountable for outcomes, for the decisions and actions that they take together affect the life of the political community and the lives of the citizens-who-become-soldiers as well as the lives of the innocent—lives they use and put at risk in war. The kind of dialogue Cohen envisions is an “uneasy, even conflictual collaborative relationship in which the civilian usually (at least in democracies) has the upper hand.”<sup>298</sup>

Cohen realizes that the war-waging solutions that that senior political and military leaders seek are not “best” by any absolute standard; rather, the ultimate standard is only that they work, that they are better than those of the enemy, and that they achieve the declared war aims.<sup>299</sup> Political leaders make mistakes, adhere to false strategies, promote misguided policies, misjudge opponents, indulge incompetents, ignore realities, and can be unlucky. This is why senior military leaders cannot simply salute and obey, and why political leaders must tolerate troublesome and sometimes uncomfortable disagreement.<sup>300</sup> Military leaders can also make mistakes, hold to foolish strategies and outmoded concepts, promote ill-conceived operations, under estimate enemy strengths and intentions, over estimate their own capabilities, and can be unlucky. This is why

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<sup>298</sup> Eliot Cohen, *Supreme Command*, *ibid.*, p. 10.

<sup>299</sup> Eliot Cohen, *Supreme Command*, *ibid.*, p. 174.

<sup>300</sup> Eliot Cohen, *Supreme Command*, *ibid.*, p. 173.



senior political leaders cannot just hand off execution to their military subordinates, and why they must drive senior military leaders to near distraction with sometimes embarrassingly probing questions. Cohen's unequal dialogue is not easy, for either political or military leaders, but he is very clear: such dialogue is necessary.

In a democracy, Cohen reminds us, the political leaders must have the final authority to decide on matters of strategy, policy, campaigns, and sometimes even tactics.<sup>301</sup> All four case studies in *Supreme Command* demonstrate adherence to this principle, even after intense debate. Those with final decision authority, however, require that the route taken to a final decision be a rough one, lined with egos bruised by long, hard arguments. The political community that political leaders represent and that commissions military officers, as well as the lives of the citizens-who-become-soldiers and the lives of the innocent, are owed no less.

Cohen does not use the term “right to be wrong,” however. He insists upon civilian leaders retaining the final decision authority and upon military leaders subordinating themselves to this authority. So on the surface, it might appear that his “final decision authority” and “the right to be wrong” are the same, but Cohen seems to be suggesting an important subtlety. That is, because of what is at stake in war—the lives of citizens-who-become-soldiers, the lives of the innocent, and, potentially, the life of the political community—those with final decision authority as well as those who are part of the dialogue leading up to decisions have an obligation to be as “right as possible” before a decision is made, or said another way, before invoking the “right to be wrong.” Here Cohen is talking about the correlative duties between senior political and military leaders

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<sup>301</sup> Eliot Cohen, *Supreme Command*, *ibid.*, pp. 10, 12, and 209.

with respect to achieving the best possible final decision. The subtle difference in Cohen's dialogue ensures that political leaders neither cut the dialogue short because it is uncomfortable, nor do they cut it short because the dialogue is not headed in the direction they want. The subtle difference also helps ensure that military leaders do not cut the dialogue short by subordinating themselves to political leaders too early because their perspectives are creating tension or the questioning they receive is too intense.

At some point Cohen acknowledges that the dialogue has to end, decisions have to be made, and directions given. At that point Cohen's senior political leader has the authority to say, "Thanks. I understand all of the arguments, potential consequences, and potential risks. I know that not all of you agree, but here's what I've decided and what I want all of you to do." Here the dialogue ends; subordination and execution begin. Cohen would not want to shut down the dialogue before that point, however. Doing so would be wrong, especially if it was shut down merely to quiet opposing views, whether military or civilian. When lives are at stake, Cohen understands that shutting down opposing views is more than simply rude behavior. In casting the dialogue as he does, Cohen does not deny the power inherent in a senior political leader's final decision authority. Rather, he is emphasizing the obligation that such a leader has to those whose lives he will use when invoking that power. His emphasis suggests that having final decision authority and exercising that authority responsibly are equally important.

The dialogue Cohen describes is unequal because political leaders have positional and legal authority over military leaders. Cohen finds no need to talk about a "right to be wrong" because of the civilian leader's unambiguous legal authority. This unequal aspect of the dialogue ensures both civil primacy and military subordination. In other

ways, however, because of the subtlety Cohen introduces, the dialogue is between relative equals. For example, both senior political and military leaders are functionally equal. Both senior civil and military leaders have vital knowledge, experience, and perspective necessary to construct the best possible strategies, policies, and military operations. One set of leaders cannot succeed without the other. Both are necessary, and in this sense, equal. Both senior political and military leaders are also morally equal, for both have responsibilities for the political community's defense, for the lives of the citizens-who-become soldiers as well as for the lives of the innocent.

The kind of the kind of dialogue Cohen envisions requires a relationship between political and military leaders that is not merely an economic relationship between employers and employees where the employer can impose his power and exploit the employee by claiming a "right to be wrong." It is a relationship based upon more than instrumental and economic values, power, control, and compliance. In order to work as Cohen describes, the dialogue requires that a degree of respect and trust exist among those in the dialogue and an equal amount of respect for the lives, individual and communal, that will be inevitably used and put at risk in execution.

Reflecting this respect, the purpose of Cohen's dialogue is to arrive at a set of decisions that have the greatest probability of protecting the life of the political community and using well the lives of citizens-who-become soldiers—not merely to establish who is dominant over whom. The unequal dialogue Cohen describes serves the purposes of protecting a political community, producing prudent action to achieve that purpose, protecting the lives of the innocent, and respecting the lives of the citizens-who-become-soldiers by using them well. This set of purposes represents values of major

significance; it demands, therefore, that the senior political and military leaders responsible for war-waging decisions conduct their business in ways corresponding to these purposes.<sup>302</sup>

Cohen's approach, like the principal-agent approach, insists upon the final decision authority resting with senior political leaders. Each of the cases that *Supreme Command* reviews demonstrates the subordination of military leaders to their political masters. Unlike the principal-agent approach, however, Cohen's approach understands "working" in a much broader sense than did the principal-agent framework. That is, "working" entails producing decisions about war aims, strategies, policies, and military campaigns that have a reasonable probability of success. Content and outcome matters for Cohen in ways it does not in the principal-agent framework.

The difference between the two approaches is reflected in how each looks at the Vietnam War. In Cohen's account both political and military leaders failed in Vietnam. "After the initial decisions to enter the war, the American civilian leadership held back from the kinds of bruising discussions with their military advisers," he writes.<sup>303</sup> "During the period of escalation," *Supreme Command* continues, "...there was no comprehensive politico-military assessment of American strategy." In *Dereliction of Duty*, Major General H.R. McMaster agrees with Cohen's assessment as he describes Vietnam in 1965 as a "war without direction."<sup>304</sup> The result: American soldiers, airmen, sailors, and marines went to war in Vietnam without strategy or direction.<sup>305</sup> General Harold K.

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<sup>302</sup> Jean Hampton, Daniel Farnham, editor, *The Intrinsic Worth of Persons: Contractarianism in Moral and Political Thought* (New York: Cambridge University Press, 2007), pp. 11, 20, and 25.

<sup>303</sup> Eliot Cohen, *Supreme Command, op.cit.*, p. 180.

<sup>304</sup> Major General H.R. McMaster, *Dereliction of Duty, op.cit.*, pp. 275-299.

<sup>305</sup> Major General H.R. McMaster, *Dereliction of Duty, ibid.*, p. 275.

Johnson, the Army Chief of Staff at the time, corroborates McMaster's and Cohen's positions. In March of 1965, and from then on, General Johnson, "openly wondered whether the American military even belonged in Indochina, a view that was exacerbated by [General William] Westmoreland's request for troops."<sup>306</sup>

Through numerous visits to Vietnam, assessments done within the office of the Secretary of Defense, the CIA, and the White House as well as reports done by senior military leaders,<sup>307</sup> "McNamara certainly, and [President] Johnson possibly, knew that the war was not going well from the beginning—as early as 1966. Yet their scrutiny of operations in Vietnam focused chiefly on the level of effort being made, not on its fundamental direction."<sup>308</sup> The problem did not lie with the strength of will of the President or the Secretary of Defense or the dominance both exerted over the Joint Chiefs; nor did it lie with their desire for details about the war. Rather, the problem lay with their inability to understand "what force could achieve" in Vietnam and what it took to run a war, and their inability to conduct an adequate dialogue with their military leaders.<sup>309</sup>

No adequate dialogue like that which Cohen holds is necessary could occur when President Johnson "especially distrusted his military advisors,...sought to keep the Chiefs from opposing his Vietnam policy,...concealed the finality of his decisions on...policy,...[and] remained ignorant of the Chief's opinions."<sup>310</sup> Or when Secretary of Defense McNamara continually attempted to sever all communications between the

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<sup>306</sup> Mark Perry, *Four Stars*, *op.cit.*, p. 148.

<sup>307</sup> General Harold K. Johnson made alone made ten trips according this his biography: Lewis Sorely, *Honorable Warrior*, *op.cit.*, p. 152.

<sup>308</sup> Eliot Cohen, *Supreme Command*, *op.cit.*, p. 182.

<sup>309</sup> Eliot Cohen, *Supreme Command*, *ibid.*, p. 184.

<sup>310</sup> Major General H.R. McMaster, *Dereliction of Duty*, *op.cit.*, pp. 50, 84, 89.

Chiefs and the president, and Ambassador Taylor circumvented the Joint Chiefs.<sup>311</sup> Finally, no adequate dialogue could occur when the President's disdain for his senior military leaders and their advice was evident. Nor could it occur given the President's desire to be left alone because he had "bigger things to do right here at home."<sup>312</sup> Given the preoccupation with body count, lack of understanding of the war, the President's intermittent interest in it, the dysfunctional civil-military relationship, and the equally dysfunctional dialogue that derived from that relationship, it is not surprising that the Vietnam War ended in failure. Although they remained in control of their military subordinates, senior political leaders did not execute their fundamental war-waging responsibilities.

Neither did the senior military leaders. "In August 1964, the Joint Chiefs of Staff served more as technicians for planning in the Office of the Secretary of Defense," according to McMaster's *Dereliction of Duty*, "than as strategic thinkers and advisers in their own right."<sup>313</sup> Mark Perry's *Four Stars* says, "on the eve of America's most important military challenge since World War II [Vietnam], the nation's highest-ranking officers represented the most diverse and divided group of policy-makers" in the history of the Joint Chiefs of Staff.<sup>314</sup> He then goes on to describe how the U.S. service chiefs themselves had conflicting understandings of the war and what it took to win—from graduated reprisals to punish North Vietnam, to massive bombing, to concerted air and ground operations "somewhere short of war."<sup>315</sup> "It was the Chiefs' infighting,"

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<sup>311</sup> Major General H.R. McMaster, *Dereliction of Duty*, *ibid.*, pp. 90 and 116.

<sup>312</sup> Lewis Sorely, *Honorable Warrior*, *op.cit.*, pp. 147-148.

<sup>313</sup> Major General H.R. McMaster, *Dereliction of Duty*, *op.cit.*, p. 147.

<sup>314</sup> Mark Perry, *Four Stars*, *op.cit.*, p. 137.

<sup>315</sup> Mark Perry, *Four Stars*, *ibid.*, pp. 141-143.

McMasters points out, “that undercut their influence most.”<sup>316</sup> Even if the civil-military dynamics would have been more supportive, no adequate dialogue could occur when the Chiefs fought among themselves, unable to construct even a military way forward upon which they could agree.

In the end President Johnson chose a middle course suggested by McGeorge Bundy which one historian described as “going to war—kinda.”<sup>317</sup> “Beginning in mid-1966” General Creighton Abrams, Westmoreland’s deputy, began to question his boss’s big unit, conventional strategy.<sup>318</sup> In 1967, all the military chiefs agreed that it was too late to withdraw and that what the United States was doing would not achieve success, but they could not agree on a strategy or on a way to present their views to the administration.<sup>319</sup> In 1968, Clark Clifford replaced Robert MacNamara as the Secretary of Defense. Clifford recalls a conversation with the Joint Chiefs of Staff in which the Chiefs said they did not know how long it would take to succeed in Vietnam, or how many more troops may be needed. Further, they offered no alternative other than to continue “attrition that would wear out the Communists,” even though they had no idea when that point might be reached.<sup>320</sup>

In *Armed Servants*, Feaver claims that the civil-military relationship during the Vietnam War worked [in the principal-agent narrow sense] because in the final analysis, the military obeyed even the orders they believed were dumb.<sup>321</sup> And in his narrow definition of “work,” he is correct, for the outcome the principal-agent framework seeks

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<sup>316</sup> Major General H.R. McMaster, *Dereliction of Duty*, *op.cit.*, p. 113.

<sup>317</sup> Mark Perry, *Four Stars*, *op.cit.*, p. 146.

<sup>318</sup> Mark Perry, *Four Stars*, *ibid.*, p. 157.

<sup>319</sup> Mark Perry, *Four Stars*, *ibid.*, p. 159.

<sup>320</sup> Eliot Cohen, *Supreme Command*, *op.cit.*, p. 179.

<sup>321</sup> Peter Feaver, *Armed Servants*, *op.cit.*, p. 171.

is only military compliance, even in the face of moral repugnance. Justice in war demands more. War always involves using lives. Using those lives, however, in ways that increase the probability they will be wasted is morally abhorrent, and those responsible for the strategies and policies leading to such waste are morally blameworthy.

During the Vietnam War, a war in which the kind of dialogue that Cohen describes was virtually non-existent, neither senior political nor military leaders exercised their war-waging responsibilities well. “Let’s be clear about it,” wrote General Bruce Palmer, Jr. in 1984 (as a general officer, Palmer was a Field Force Commander in Vietnam, a deputy to General Westmoreland, and the Army’s Vice Chief of Staff), “the United States failed to achieve its objectives in Vietnam.” Palmer then lists the price for the years of ambiguous aims, poor strategy, and ineffective policy that resulted from an inadequate dialogue between senior political and military leaders: over 58,000 American lives, even more Vietnamese lives—combatant and noncombatant, destruction in North and South Vietnam, many billions of dollars, damage to U.S. self esteem and confidence, as well as damage to American prestige abroad.<sup>322</sup> Palmer then poses a question: “Was it all in vain?”

Palmer uses “vain” in a different sense than did General McChrystal in the Iraqi desert. McChrystal was exhorting his soldiers to fight on, to accomplish the objectives they were assigned, and in so doing give meaning to their sacrifices. McChrystal’s was a tactical perspective. Palmer’s question is a strategic one, for the “it” in Palmer’s question refers to the war itself. His is a strategic question that can be understood in at least two ways.

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<sup>322</sup> General Bruce Palmer, Jr., *The 25-Year War: America’s Military Role in Vietnam* (Lexington, Kentucky: The University Press of Kentucky, 1984), pp. 172-173.



First, was waging the Vietnam war worth paying this price? Said another way, were the benefits of the war proportional to the costs? This version of the question concerns *jus ad bellum*.<sup>323</sup> The second way Palmer's question may be understood, however, demonstrates that it is very much an issue of *jus in bello*. In this version, the question is, "did the way political and military leaders waged the war waste the lives of citizens-who-became-soldiers and put at risk the lives of the innocent unnecessarily?" The second version of Palmer's question is a matter of prudence in the waging of war.

This is also the question that haunted General Johnson, who in retirement, "remembered the day I was ready to go over to the Oval Office and give my four stars to the President and tell him, '...you have required me to send men into battle with little hope of their ultimate victory; and you have forced us in the military to violate almost every one of the principles of war in Vietnam. Therefore, I resign and will hold a press conference after I walk out of your door.' Then, added Johnson with a look of anguish, 'I made the typical mistake of believing I could do more...if I stayed in than if I got out. I am now going to my grave with that lapse of moral courage on my back.'"<sup>324</sup>

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<sup>323</sup> For example, in *The Morality of War*, *op.cit.*, Brian Orend describes two of the tests one considers in determining whether to go to war—"probability of success...and proportionality." With respect to probability of success, Orend says, "it remains important that communities contemplating war...consider whether such an extreme measure has any reasonable probability of success. That is the least...that they owe themselves." With respect to proportionality, he says, "a state considering a just war must weigh the expected universal (not just selfish national) benefits of doing so against the expected universal costs." (pp. 58-60) Both, he concludes are difficult but necessary judgments associated with the decision to go to war.

<sup>324</sup> Lewis Sorely, *Honorable Warrior*, *op.cit.*, p. 304.

### **Preventing, reversing, or sustaining imprudence.**

Prudence has to do with exercising sound judgment, being able to assess the facts of a specific situation and pick out the best course of action to follow, given actual limitations and constraints. A prudent choice avoids both the extreme of being brash, taking too much risk, and of being overly cautious, avoiding any risk. Finally, prudence also includes action, execution, and implementation.<sup>325</sup> Properly understood, prudence lies at the very heart of *jus in bello*'s war-waging responsibilities.

Some may find any application of prudence in war oxymoronic. After all, on the battlefield, the imprudent, in some sense, is a daily routine. In other senses, not so, for prudence in war includes considerations other than risk and danger. War requires that soldiers be willing to risk their lives, but also that their commanders, and civilian leaders, not ask them to do so foolishly or pointlessly. Soldiers expect that they may have to risk their life trying to take some important objective, rescue a fellow soldier, or protect an innocent non-combatant. They do not expect to have their life "thrown away" or "wasted" in missions without much hope of achieving something that would give their sacrifices meaning. Unit Citations and individual medals are awarded for valor: doing what many would consider rash. For example, the paratroopers who jumped behind enemy lines prior to D-Day, knowing that at best they would be surrounded as they fought to seize and retain objectives assigned to them, and the rangers who climbed the cliffs of Point de Hoc under withering fire on D-Day are still honored. These actions seem imprudent from one perspective, but not from another. The purposes involved gave

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<sup>325</sup> Clarke D. Forsythe, *Politics for the Greatest Good: The Case for Prudence in the Public Square* (Downer's Grove, Illinois: InterVarsity Press, 2009), p. 16; Aristotle, *Nicomachean Ethics*, Martin Oswald, translator, (Indianapolis, Indiana: The Bobb-Merrill Company, 1962), pp. 152-173.

these risks and sacrifices meaning. The soldiers who took these risks and made these sacrifices knew they were involved in achieving a worthwhile end; their lives were used for a worthy purpose, not wasted, or used in vain as Palmer's question suggests they were Vietnam.

Prudence has a place in war: "prudent risks"—whether tactical or strategic—are acceptable, and leaders who can identify and take them are necessary to win wars. "Gambles" are not, for whether tactical or strategic, they represent excessive risk because they put individual lives and perhaps the life of the political community itself in unnecessary danger. Any reader of Eisenhower's *Crusade in Europe* is struck by the multiple, extended conversations and arguments among Eisenhower and his senior leaders focused on the risks inherent in the operations he commanded and the degree to which they might be mitigated.<sup>326</sup>

Eisenhower's account illustrates the fact that prudence is—or should be—an essential war-leader behavior. One can see it most clearly by comparing commanders. In the U.S. Civil War, General McClellan is often used as an example of an overly cautious leader, missing opportunities that the battlefield presented to him, while General Grant is more widely seen as an aggressive, risk-taking commander—although some say overly aggressive at times. In World War II, British Field Marshal Montgomery is usually judged to be more cautious (except perhaps in the Arnhem campaign), whereas General Patton is recognized as an aggressive risk taker—again sometimes overly so according to some. In the Korean war, General MacArthur's Inchon operation is usually understood

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<sup>326</sup> Dwight D. Eisenhower, *Crusade in Europe*. (New York: Doubleday and Company, Inc., 1948), pages 220-252.

as an example of bold, but acceptable, risk; his drive to the Yalu River, on the other hand, many see as rash.

Senior political and military leaders seek, or ought to seek, prudence with respect to war aims, strategies, policies, and military campaigns. They should seek to decide and act within the proper balance between the extremes of rashness and excessive caution. Identifying the “Aristotelian mean” depends upon the specifics, the facts, of each case. Sometimes the prudent action will lean more toward the rash; other times, more toward the cautious. A prudent judgment, and the actions that flow from it, is more art than science. Hence, a broad understanding of history, knowledge of the applicable principles, an analytic mind that can discern the relevant facts of a particular case, a synthetic mind that can see coherence amid the fog of ambiguity, the ability to listen to the experiences and judgments of others, and allow a decision to emerge from an extended discourse—all are essential war-leadership traits—whether military war leadership at the war-fighting level or senior political and military leadership at the war-waging level.

Waging war, Cohen correctly says, is too complex for any one person, or small set of people to understand. There is no Clausewitzian genius.<sup>327</sup> To discover the prudent set of war aims, strategies, and policies necessary to wage war, therefore, senior political and military leaders need each other; they must collaborate. Together, they must set war aims, identify strategies and policies, manage alliances and bureaucracies, decide upon the nature of acceptable risk, and shape operational choices—even where the final decision authority lies with the senior political leaders.<sup>328</sup> Together, they must ensure

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<sup>327</sup> Carl von Clausewitz, *On War*, *op.cit.*, pp. 100-112; Eliot Cohen, *Supreme Command*, *op.cit.*, pp. 173-207.

<sup>328</sup> Eliot A. Cohen, *Supreme Command*, *ibid.*, pp. 10 and 173-224.

that war aims and military, diplomatic, economic, and fiscal strategies and policies are aligned as best as possible. Together they must constantly assess and reassess progress toward achieving strategic aims and changes to the multiple realities of war, then adapt their own aims, strategies, policies, and military operations, constantly rebalancing means and ends. A dialogue like Cohen suggests has two basic aims: avoid taking imprudent action—whether imprudent because it is overly cautious or overly rash, or if taken in error or proven to be imprudent as the war unfolds, and adapt quickly so that the imprudence is short-lived—all in order to achieve war aims at the least cost in lives, both of the innocent and of citizens-who-become-soldiers, and to minimize risk to the political community.

Finding the prudent course, avoiding the rash and the overly cautious, adjusting that course as a war unfolds, and maintaining sufficient unity in a nation's commitment to success are hard enough even under ideal conditions. In many cases, it is not the side who gets it right that wins a war, but the side that gets it least wrong, can adapt the fastest, and can sustain its will to win. A continual, open, respectful, straight-forward, often brutally harsh, facts-of-the case-based discourse—as prudence demands and as Eisenhower's book<sup>329</sup> and Cohen's unequal dialogue describe—increases the probability of “getting it least wrong” and adapting as conditions change. No doubt that bullying, belittling, backdooring, undermining, one-upsmanship, slow-rolling, power struggles, egos, turf battles, and other ever-present human and organizational dynamics—whether intentional or not, whether military or civilian—are all too common. Equally without

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<sup>329</sup> For another useful look at collaboration and discourse, see Mark Perry's, *Partners In Command* (New York, Penguin Press, 2007) where Perry explores the relationship and exchanges between George Marshall and Dwight Eisenhower.

doubt is that the more such dynamics dominate the dialogue among those senior political and military leaders responsible to wage war, the lower the likelihood of adopting a prudent course of action, the lower the likelihood of success, and correspondingly, the higher the probability of wasting resources and the lives citizens-who-become-soldiers as well as risking the lives of the innocent and the life of the political community.

As difficult as it may be, the responsibilities associated with waging war demand nothing short of the highest quality discourse among senior political and military leaders, even if the discourse is uncomfortably brutal at times. The tri-partite tension inherent in waging war requires that senior political and military leaders constantly assess and reassess progress toward achieving strategic aims, changes in enemy activities, modifications required of friendly forces, then rebalance means and ends by adapting aims, strategies, policies, and military operations. This is the requirement that Cohen's unequal dialogue captures.

The war in Iraq under the Bush administration provides a good example of the role that dialogue plays in waging war and the effect that the quality of the dialogue has on a war. The senior political and military leaders who waged the Iraq war used two very different kinds of dialogues. The first governed 2003-2006 period in Iraq; the second, 2007 and 2008 period. The first dialogue was characterized by a mix of the principal-agent framework and "the normal theory." At times, civilian leaders deferred execution to military leaders and at other times demanded compliance. The first dialogue used an *ad hoc* approach of multiple conversations and manipulation. Often responsibilities were mixed and confused. The second looked more like the unequal dialogue Cohen describes. The difference between the results from the two kinds of dialogues is stark.

### **The story of two dialogues.**

The first dialogue governed the planning for the invasion of Iraq and the waging of the war for the first several years, 2003-2006. By the time of the invasion of Iraq in 2003, the Bush administration had been at war in Afghanistan for two years. There were three early indicators that the 2003-2006 dialogue was broken. The first surrounded General Eric Shinseki's concerns about the invasion strategy—the flow of forces, supply lines, and the tenuous “northern approach” through Turkey—which he expressed to the President in a closed meeting on January 30, 2003. Kore Schake, who attended this meeting with the President, said, “It’s the only time in my life where I felt like you could hear the hinge of history turn. The President clearly didn’t know what to do. So he thanked Shinseki and moved on.”<sup>330</sup>

The second occurred in General Shinseki's doubts about preparedness for what might follow regime change in Iraq, doubts he expressed in testimony before the Senate Armed Services Committee on February 25, 2003. When pressed by Senator Carl Levin's question about the potential size of force necessary to occupy Iraq after the Saddam regime was toppled, Shinseki replied, “Something on the order of several hundred thousand soldiers are probably...a figure that would be required.”<sup>331</sup> This assessment was counter to the Bush-Cheney team's narrative, and it upset both Secretary of Defense Donald Rumsfeld and his deputy Paul Wolfowitz.<sup>332</sup> In his own testimony before the House Budget Committee on February 27, 2003, Wolfowitz said that Shinseki's estimate

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<sup>330</sup> Peter Baker, *Days of Fire: Bush and Cheney in the White House*, (New York: Doubleday, 2013), Kindle locations 5089-5102.

<sup>331</sup> Peter Baker, *Days of Fire*, *ibid.*, Kindle location 5203-5205; Michael Gordon and General Bernard Trainor, *Cobra II*, *op.cit.*, pp. 101-104.

<sup>332</sup> Peter Baker, *Days of Fire*, *op.cit.*, Kindle location 5203-5232.

was “wildly off the mark.”<sup>333</sup> Further, “neither Rumsfeld nor Wolfowitz ever asked Shinseki about his public estimate...so it was reasonable for the general to assume his views were not welcomed.”<sup>334</sup> Shortly after General Shinseki’s response to Senator Levin’s question, the Defense Department started the discussion about Shinseki’s replacement. The discussion of a replacement was public and earlier than normal—another indication that “it was reasonable for the general to assume his views were not welcome.”

The third indication happened during the initial invasion. Army Lieutenant General Scott Wallace—the Commanding General of the army corps responsible, with a Marine Expeditionary Force, for the ground campaign that would topple Saddam Hussein’s regime—gave a joint interview to reporters of the *Washington Post* and *New York Times*. In the interview, Wallace said that the Iraqi irregular and paramilitary forces were “a bit different from” the enemy they had anticipated. This remark, welcomed by some on the National Security Council who believed they were “not getting the straight story from Rumsfeld,” was interpreted by Secretary Rumsfeld and General Tommy Franks (the Commander of Central Command and Wallace’s overall boss) as disloyalty, a repudiation of the strategy in Iraq, and a sign of Wallace’s own lack of aggressiveness.<sup>335</sup> As one reporter put it, what Wallace had said “was dangerously off-message....Defense Secretary Donald Rumsfeld was furious. Wallace was told to shut up around reporters. It was vintage Rumsfeld: after insisting on a very small invasion force, he refused to allow

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<sup>333</sup> Thomas E. Ricks, *Fiasco: The American Military Adventure in Iraq* (New York: the Penguin Press, 2006), pp. 96-100; Peter Baker, *Days of Fire*, *ibid.*, Kindle location 5205.

<sup>334</sup> Peter Baker, *Days of Fire*, *ibid.*, Kindle location 5219-5232.

<sup>335</sup> Michael Gordon and General Bernard Trainor, *Cobra II*, *op.cit.*, pp. 311-314.



his generals to admit their surprises and their constraints.”<sup>336</sup> The tenor of these three early indicators was clear: questions, doubts, and deviations are not welcome. Comply. This would not be an unequal dialogue in Cohen’s sense, or any sense for that matter.

From 2003 to 2006, even in the face of evidence that the overall strategy in Iraq—progress toward a democracy to create security, transition responsibility to the Iraqis as quickly as possible, and withdraw—was failing, no serious adjustments to the approach were made.

In 2003, violence was rising even as General Franks withdrew the three major headquarters that conducted the initial invasion to topple the Saddam regime and replaced it with one.<sup>337</sup> The CIA briefed senior political leaders of a growing insurgency in November of 2003 and Bremer reported to Vice President Cheney that “we do not have a military strategy for victory,” yet the approach did not change.<sup>338</sup>

Neither did the approach change in 2004. In April of 2004 the U.S. Marines—at the direction of the White House and against military recommendations—initiated an intense battle in Fallujah against a determined enemy, only to have senior political leaders direct them to stop the battle mid-stream.<sup>339</sup> (Later that year, U.S. forces went back to a bigger “hornet’s nest” in Fallujah.) In November of 2004, Deputy Secretary of State Richard Armitage told the President that “We’re not winning in Iraq,” the President asked, “Are

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<sup>336</sup> James Kitfield, “My Iraq War,” in *National Journal*, March 21, 2013. Available at: <http://www.nationaljournal.com/magazine/my-iraq-war-20130321>.

<sup>337</sup> Peter Baker, *Days of Fire*, *op.cit.*, Kindle locations 5746, 5759, and 5772; Michael Gordon and General Bernard Trainor, *Cobra II*, *op.cit.*, pp. 459, 487, and 493.

<sup>338</sup> Peter Baker, *Days of Fire*, *ibid.*, Kindle locations 6057 and 6070.

<sup>339</sup> Lieutenant General Ricardo S. Sanchez, *Wiser in Battle*, *op.cit.*, pp. 347-360; Peter Baker, *Days of Fire*, *ibid.*, Kindle locations 6680-6720.

we losing?” and Armitage replied, “Not yet.”<sup>340</sup> The administration’s approach to Iraq did not change after Armitage’s report, nor did it change after the Deputy Secretary of Defense Paul Wolfowitz reported that, while the major violence in Iraq was in 4 of Iraq’s 18 provinces, the other 14 were growing less stable, not more. Rather than react to Wolfowitz’s report, “almost punctuating the lack of interest,” Bob Woodward observes in *State of Denial*, “[President] Bush reverted to the old talking points in a public question-and-answer forum: 14 of the 18 provinces in Iraq appear to be relatively calm.”<sup>341</sup> In December 2004, the U.S. Ambassador in Baghdad, John Negroponte, sent a nine page memorandum to President Bush saying that a quick handover to Iraqis—a key component of the U.S. strategy in Iraq—was not possible and that efforts to rebuild Iraq were hampered by a resilient insurgency which was hardly defeated.<sup>342</sup> Political and military leaders were talking, but there was little dialogue and less change.

Another year, 2005, opened and closed without any significant adjustments to aims, strategies, or policies. Early in 2005, Secretary of State Condoleezza Rice commissioned an assessment of Iraq. The result was depressing. It called Iraq a failed state with an active insurgency and a disaffected Sunni population. The assessment concluded that the U.S. did not have a comprehensive, unified policy and that not enough attention was being paid to the political side of counterinsurgency.<sup>343</sup> About the same time, Colonel Derek Harvey presented an even starker assessment to the U.S. Defense Policy Board. The conclusions of this study rejected Secretary Rumsfeld’s position at the time that the

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<sup>340</sup> Peter Baker, *Days of Fire*, *ibid.*, Kindle locations 7655, 7881, and 7971-7984.

<sup>341</sup> Bob Woodward, *State of Denial: Bush at War Part III* (New York: Simon & Schuster, 2006), pp. 368-369.

<sup>342</sup> Michael Gordon and General Bernard Trainor, *The Endgame: The Inside Story of the Struggle for Iraq from George W. Bush to Barack Obama*, (New York: Pantheon Books, 2012), pp. 130-132.

<sup>343</sup> Bob Woodward, *State of Denial*, *op.cit.*, pp. 397-390.

U.S. faced only die-hard fanatics and dead-enders, not an organized insurgency. Rather, Harvey described, in great detail, how the insurgency was well trained; well led; linked by family, tribal, and profession ties; and was exploiting the remnants of the collapsed Iraqi state. Harvey briefed the staff and selected principals of the National Security Council, White House, and Joint Chief Staff. His message was not well received, for his description ran counter not only to Rumsfeld's personal belief but also to the more positive assessments being reported by the senior political and military leaders at the time.<sup>344</sup> A senior Central Intelligence Agency analyst also produced an assessment that was skeptical of the claims of progress. His analysis was that Iraq was slipping toward a civil war, elections would not produce security and stability by themselves, and Iran had already established intelligence and operational networks in Iraq.<sup>345</sup> Regardless, in May of 2005, Vice President Dick Cheney said on CNN that he thought that Iraq was "in the last throes...of the insurgency." As Woodward put it, "it was a total denial of reality and of the trend."<sup>346</sup>

On June 28, 2005, the President reiterated his strategy in his speech on June 28, 2005 at Fort Bragg, North Carolina, "Our strategy can be summed up this way: As the Iraqis stand up, we will stand down."<sup>347</sup> Meanwhile Steven Hadley, the National Security Advisor did not believe "hand off to the Iraqis" was a strategy and hired Peter Feaver to write and staff a more comprehensive strategy.<sup>348</sup> July 2005, Zalmay Khalilzad replaced John Negroponte as the U.S. Ambassador to Iraq. Once there, he formed a Red Team to assess the current situation and approach. This team concluded that the current approach

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<sup>344</sup> Michael Gordon and General Bernard Trainor, *The End Game, op.cit.*, pp. 132-133.

<sup>345</sup> Michael Gordon and General Bernard Trainor, *The End Game, ibid.*, pp.135-136.

<sup>346</sup> Bob Woodward, *State of Denial, op.cit.*,p. 397.

<sup>347</sup> Bob Woodward, *State of Denial, ibid.*,pp. 426-426.

<sup>348</sup> Bob Woodward, *State of Denial, ibid.*,p. 427.

was badly off course and had almost no prospect of success, that the timetable for handing power over to the Iraqis simply set them up for failure, and that the focus was too heavily weighted toward withdrawal rather than success. The Red Team also reported that the insurgency was resilient and capable of regenerating itself and that the planned size of the Iraqi security forces would likely be too small. Khalilzad showed his team's assessment to both senior military and civilian leaders to no avail.<sup>349</sup> Feaver ultimately produced a 35 page "Strategy for Victory" in September which President Bush approved, but nothing actually changed in Iraq. By November of 2005, Representative Jack Murtha would claim that the approach to Iraq was "flawed policy wrapped in illusion," but even this criticism from a long-time supporter of America's military did not prompt fundamental change.<sup>350</sup>

The opportunity to actually change approaches in Iraq in 2005 would pass. The successful December 2005 election of a Prime Minister in Iraq was judged to be sufficient progress, confirming the original democracy/transition/withdrawal strategy. Simply put, Secretary Rumsfeld "wanted to do everything possible to tamp down the critics," and General George Casey, the senior general in Iraq, remained convinced that the plan was on track and that hand over to Iraqi security forces followed by U.S. force reductions would be possible in 2006.<sup>351</sup>

In fact in early 2006, "Casey made the decision to off-ramp two brigades... in effect cutting the force by that amount."<sup>352</sup> This force reduction took place about the same time

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<sup>349</sup> Michael Gordon and General Bernard Trainor, *The End Game*, *op.cit.*, pp. 158-162.

<sup>350</sup> Bob Woodward, *State of Denial*, *op.cit.*, pp. 423-424; Peter Baker, *Days of Fire*, *op.cit.*, Kindle locations 8903, 8916, and 8929.

<sup>351</sup> Michael Gordon and General Bernard Trainor, *The End Game*, *op.cit.*, p. 163.

<sup>352</sup> Michael Gordon and General Bernard Trainor, *The End Game*, *ibid.*, pp. 189-190.

as the bombing of Samarra's Al Askari Mosque on February 22, 2006—the attack that triggered massive sectarian violence in Iraq. Although both military and political leaders believed that “the nature of the conflict had changed,” little changed as to the basic approach.<sup>353</sup> Casey reports that they did explore various courses of action, but determined that the Al Askari attack did not trigger a civil war, the violence continued to be confined to only three provinces, so “we laid out specific objectives and tasks...much as we had in our earlier campaign plan.”<sup>354</sup> Both military and civilian leaders at the time held to the original strategy: progressing along the milestones set for Iraq's move toward democracy, handing over responsibility to the Iraqis, and withdrawing.<sup>355</sup> By the end of 2006, Casey had shifted his position to believe additional troops were required, but as he admitted, “I waited too long to make the decision to cancel the drawdown.”<sup>356</sup>

The 2003-2006 dialogue between political and military leaders was not producing anything close to a prudent way to wage the Iraqi war. Though this period was marked by multiple, intense discussions on Iraq, many visits, secure video conferences, meetings, briefings, and assessments, the war was not being waged well. All of these discussions added up to a facsimile of the kind of dialogue Cohen recommends, but not the real thing. In retrospect, the facsimile had more in common with discussion around compliance with the plan rather than a dialogue around adapting the plan to unfolding realities. Adapting

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<sup>353</sup> General George W. Casey, *Strategic Reflections: Operation Iraqi Freedom, July 2004-February 2007* (Washington, D.C.: National Defense University Press, 2012), p. 94.

<sup>354</sup> General George W. Casey, *Strategic Reflections, ibid.*, p. 96.

<sup>355</sup> Peter Baker, *Days of Fire, op.cit.*, Kindle locations 9270-9303; General George W. Casey, *Strategic Reflections, ibid.* p. 98; Michael Gordon and Bernard Trainor, *The End Game, op.cit.*, pp. 192-195; Bob Woodward, *The War Within: A Secret White House History, 2006-2008* (New York: Simon & Schuster, 2008), pp. 107-109.

<sup>356</sup> General George W. Casey, *Strategic Reflections, ibid.*, pp. 113-116.

requires a real dialogue. Compliance does not. It needs only the people in charge demanding greater effort in doing what they want done, how they want it done.

Meanwhile, the soldiers and marines who carried the weight of fighting the war during this period did all they were asked to do, and sometimes much more. From the principal-agent perspective, waging the Iraq of 2003-2006 was an example of “working,” but the realities in Iraq were more violence, more instability, a larger insurgency, emboldened militias, growing involvement of foreign fighters, and strategic aims not being achieved. Senior political and military war-waging responsibilities in the 2003-2006 period—the setting of war aims; making strategy, policy, and campaign decisions that increase the probability of being right, or at least less wrong than those one is fighting; translating those decisions into action to achieve war aims at the least cost, in lives and resources, and least risk to one’s political community, and adapting to changing realities as they unfolded—left much to be desired.

In fact the 2003-2006 period emerges as an example more of sustained imprudence than of prudence and of a broken dialogue that was aimed more at compliance with the original strategy than adapting to the unfolding dynamics of war and ensuring the lives of the citizens-who-become-soldiers were being used well. Further, as was the case in Vietnam, as casualties mounted and a successful outcome seemed less and less likely, American political support for the war eroded from 2003 to 2006. The legitimacy of the Iraq war was being eroded by the lack of progress and the appearance that the war was unwinnable. By early 2007 there was open discussion in Congress and across America of

forcing a withdrawal from Iraq because many believed the war was a lost cause.<sup>357</sup> This was the reality that Secretary of Defense Robert Gates, Rumsfeld's replacement, faced.

To deal with this reality, President Bush, Secretary Gates, and other senior political and military leaders employed a much different dialogue and approach to their war-waging responsibilities. Senator Levin put it clearly in his opening statement to Secretary Gates' confirmation hearing on December 6, 2006 saying, "The situation in Iraq has been getting steadily worse, not better....we thoughtlessly disbanded the Iraqi army and disqualified tens of thousands of low-level Baath Party members from future government employment....we have failed...to secure the country and defeat the insurgency....we have failed to disarm the militias....we have failed to rebuild the economic infrastructure of the country."<sup>358</sup> Senator Levin went on to say that the "Department of Defense's effectiveness had been reduced by a civilian senior leadership that has 'too often not welcomed differing views, whether from our uniformed military leaders, the intelligence community, the State Department, American allies, or members of Congress of both political parties."<sup>359</sup> No dialogue worthy of the name existed in the 2003-2006 period. Consequently, the war-waging responsibilities shared by the senior political and military leaders of the time could not be executed properly.

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<sup>357</sup> Four articles illustrative of the mood in the United States in 2007 are the following: Michael Crowley, "Can Lobbyists Stop the War?" New York Times, September 9, 2007 and available at <http://www.commondreams.org/headlines07/0130-09.htm>; Susan Connell, "Congress Can Stop the War," Reuters, January 30, 2007 and available at <http://www.nytimes.com/2007/09/09/magazine/09antiwar-t.html?pagewanted=all>; William G. Howell and John C. Penhouse, "When Congress Stops Wars," Foreign Affairs, September/October 2007 and available at <http://www.foreignaffairs.com/articles/62831/william-g-howell-and-jon-c-pevehouse/when-congress-stops-wars>; and Jim Vandehei and John Hamid, "Dems Could Do Far More to End Iraq War," Politico, September 2007 and available at <http://www.politico.com/news/stories/0907/6048.html>. See also a compilation of videos put together by the U.S. Institute of Peace that describes the situation in Iraq at the beginning of 2007: [http://www.youtube.com/watch?v=u6\\_xTnoTKtI](http://www.youtube.com/watch?v=u6_xTnoTKtI).

<sup>358</sup> Robert M. Gates, *Duty: Memoirs of a Secretary at War* (New York: Alfred A. Knopf, 2014), pp. 16-17.

<sup>359</sup> Robert M. Gates, *Duty*, *ibid.*, p. 17.

A second, and markedly different, Iraq dialogue began in the early summer of 2006 and came to maturity during Secretary Gates' tenure. Perhaps this new dialogue was triggered by the significant rise in sectarian violence following the Samarra mosque bombing; or from a memo to the White House from aides in Baghdad that said the strategy of political progress, transition to Iraqi control, and withdrawal was failing because the assumptions upon which this strategy rested were no longer valid; or from pressure growing in the American public and building in Congress.<sup>360</sup> Perhaps it was a combination of these factors and others that were added to the President's own torment after visiting casualties and meeting grieving military families, that led to the different approach.<sup>361</sup> For it was in August of 2006 that the President, when meeting with relatives of slain soldiers, heard from one mother, "Don't let my son have died in vain." And from another he heard, "He did his job. Now you do yours." For the President, "withdrawing troops before Iraq was secure would be admitting their sons and daughters had indeed died in vain, and this was something he just could not let happen."<sup>362</sup> Or perhaps it was a conjunction of reports and assessments in the last half of 2006, all of which described an increasingly violent Iraq, suggested that the original strategy and policies were failing, and predicted a dire result if a different approach was not taken. By the late summer and early fall of 2006, the situation in Iraq was so bad no one could claim the strategy was working. Identifying the exact cause of the change in the dialogue, or cause or the precise point in time when it changed is not important. That a real dialogue did emerge is what is important.

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<sup>360</sup> Peter Baker, *Days of Fire*, *op.cit.*, Kindle locations 9517 and 9529.

<sup>361</sup> Peter Baker, *Days of Fire*, *ibid.*, Kindle locations 2940, 2967, 3463, 5356, 5498, 6982, 7113, 8178, 9490, and 10024.

<sup>362</sup> Peter Baker, *Days of Fire*, *ibid.*, Kindle location 10028-10037.



One of the major differences was the perspective of President Bush. Initially, he mostly followed developments in Iraq, but delegated the conduct of the war to his subordinates. His approach was to trust and delegate to his generals and civilian subordinates. “You fight the war, and I’ll provide political cover” was the way President Bush described his approach.<sup>363</sup> The President was to become a much more involved and assertive presence in the second dialogue. Another difference was an insistence on a ground-reality based discussion and an inclusion of more disparate views of the realities in Iraq. Besides his own staff, secretaries, and military commanders, the President sought the perspectives of more junior members of his staff, academics, think tanks, a specially formed Iraq Study Group, and retired generals. A third difference was the fact that all options were on the table. This would be a well-focused, robust, often contentious, even brutal set of discussions that did not occur in the first non-dialogue governing the 2003-2006 period. Whereas the first sought to downplay differences, the second would not.<sup>364</sup> A fourth difference was a new Secretary of Defense who identified his “highest priority” as “turning the situation around in Iraq.”<sup>365</sup>

This second dialogue focused on two opposing courses of action: the status quo—i.e. make progress in Iraq’s move to democracy, transition to Iraqi control, and reduce forces in Iraq toward ultimate withdrawal—or a “surge,” an increase the size of U.S. forces and shift to a counterinsurgency strategy. Most of the President’s military and civilian

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<sup>363</sup> Peter Baker, *Days of Fire*, *ibid.*, Kindle location 9504.

<sup>364</sup> The debate of late 2006/early 2007 that led to the increase in U.S. forces and change of strategy, known as the “Surge,” is well documented. For four of the more complete accounts see: Bob Woodward, *The War Within*, *op.cit.*, pp. 3-13 and 53-312; Michael Gordon and Bernard Trainor, *The Endgame*, *op.cit.*, pp. 267-328; Thomas Ricks, *The Gamble: General David Petraeus and the American Military Adventure in Iraq, 2006-2008* (New York: The Penguin Press, 2009), pp. 74-148; and Peter Baker, *Days of Fire*, *ibid.*, Kindle locations 9517, 9529, 9620, 9658, 9672, 9854, 9999, 10129, 10142, 10589, 10695, and 10733.

<sup>365</sup> Robert M. Gates, *Duty*, *op.cit.*, p. 25.

advisors as well as the Iraqi Study Group recommended the status quo, but the President chose change. This decision flowed from two important sources: first, a very detailed understanding of the political and military situations in Iraq and within the United States; second from an extensive, extended, and often contentious and iterative set of discussions including the President, his principal national security advisors, active and retired senior military leaders, Congressional leaders, think tanks, and academics. Besides the internal review ordered by the President, there were other, independent reviews by military headquarters, think tanks, and governmental departments. All contributed, directly or indirectly, to the final recommendations made to the President. The final decision was the President's to make, but the route to that decision was a contentious and inclusive one.<sup>366</sup>

In the end, President Bush changed not only the strategy but also his leadership team. In Iraq, General David Petraeus replaced General George Casey and Ambassador Ryan Crocker replaced Zalmay Khalilzad, Admiral William "Fox" Fallon replaced General John Abazaid at Central Command, and Robert Gates became the Secretary of Defense replacing Donald Rumsfeld. The result of the second dialogue was twofold. First, it produced unambiguous strategic, political-military unity of purpose: clear strategic direction as well as new strategies, policies, and a new military campaign to achieve the aims the President set. Second, it established a set of civil and military leaders who were expected to align policies and execute the new direction. Over the next two years, 2007-2008, execution of this new direction dramatically reduced the overall violence levels in

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<sup>366</sup> There are multiple accounts of the events, arguments, briefings, and maneuverings that led to President Bush's decision to "surge" in Iraq in 2007. Among some of the more complete are the following: Robert M. Gates, *Duty*, *op.cit.*, pp. 27-79; Michael R. Gordon, *The Endgame*, *op.cit.*, pp. 267-328; Thomas E. Ricks, *The Gamble*, *op.cit.*, pp. 3-127; and Bob Woodward, *The War Within*, *op.cit.*, pp. 3-13 and 42-321.

Iraq; saw the acceleration of Iraqi security force growth in size, capability, and confidence; permitted nescient Sunni reconciliation to spread and Shia militia influence to diminish; and created the opportunity for political solutions that were absent in 2005 and 2006. By mid 2008, U.S. force reductions began and a Status of Forces Agreement was being negotiated between the United States and Iraq. In 2009 U.S. forces withdrew from Iraqi cities, which set the conditions for ultimate withdrawal of all American forces from Iraq.<sup>367</sup> The second dialogue helped contribute to turning potential failure into potential success.

Another contribution, at least as important, came from translating the war-waging decisions which emerged from the second dialogue into action, then adapting as events unfolded. *Supreme Command*, unfortunately, says nothing about this execution dimension of senior political and military leader responsibility.

### **Conclusions: The unequal dialogue, necessary but insufficient.**

Justice in the conduct of war, *jus in bello*, entails two sets of responsibilities. The first are war-fighting responsibilities. These are the moral responsibilities that soldiers and their leaders have in the midst of battle. These responsibilities emanate from the tension between winning and fighting well and are adequately addressed in Walzer's *Just and*

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<sup>367</sup> Michael Gordon and Bernard Trainor, *The Endgame*, *ibid.*, pp. 329-504; Thomas Ricks, *The Gamble*, *ibid.*, pp. 127-293; Bob Woodward, *The War Within*, *ibid.*, pp. 374-425; and Peter Baker, *Days of Fire*, *ibid.*, Kindle locations 10757-11401 and 11730-12318; Lieutenant General James M. Dubik, "Operational Art in Counterinsurgency," The Institute for the Study of War, Washington, D.C., May 2012; and David Petraeus, "How We Won in Iraq and why all the hard-won gains of the surge are in grave danger of being lost today," Foreign Policy on line, October 30, 2013. Available at [http://www.foreignpolicy.com/articles/2013/10/29/david\\_petraeus\\_how\\_we\\_won\\_the\\_surge\\_in\\_iraq#sthash.bV18Kydz.dpbs](http://www.foreignpolicy.com/articles/2013/10/29/david_petraeus_how_we_won_the_surge_in_iraq#sthash.bV18Kydz.dpbs).

*Unjust Wars* and other of his writings. The second set concerns war-waging responsibilities. These are the moral responsibilities of senior political and military leaders to identify and execute proper war aims, strategies, policies, and military campaigns. These responsibilities emanate from a tripartite tension and are linked to the rights of a political community and of its citizens, the same as those which Walzer uses as the basis of his just war theory. These war-waging responsibilities, as earlier chapters have shown, are absent from Walzer's account of *jus in bello*.

The principal-agent framework of *Armed Servants*, an approach that describes the interaction of senior political and military leaders, was found inadequate as an explanation of war-waging responsibilities. The framework was inadequate because it places too much emphasis on power, control, subordination, and compliance. The framework also over-emphasized the economic, employer-to-employee aspect of the relationship between the senior political and military leaders who wage war. While the framework does identify the need for military leaders to advise political leaders concerning decisions they are considering, even offering sharply and strongly delivered advice when necessary, the primary emphasis is on the political leader's "right to be wrong" and on military compliance with what civilians want done and how they want it done. The principal-agent framework places insufficient emphasis on the responsibility for outcomes: to ensure that the political leader's final decision is as right as possible. Further, insufficient emphasis was placed on the co-responsibility that senior political and military leaders share in both the decision making process and in execution. To be fair, Peter Feaver never intended the framework to provide an explanation of the moral responsibilities of senior political and military leaders. Rather, he wanted only to provide

an explanation of how civilian principals got their military agents to “work,” in the narrow definition of the term.

In the end, the principal-agent framework provided some useful perspectives, but Cohen’s unequal dialogue approach provided much more. His discussion of the kind of “unequal” dialogue necessary to execute properly senior political and military leader war-waging responsibility provided an understanding of political leader final decision authority that is more nuanced than simple asserting “the right to be wrong.” While Cohen, at least for democracies, correctly insists upon final decision authority resting with political leaders, he is equally insistent upon a certain kind of dialogue whose purpose is to arrive at a set of outcomes—decisions that increases the chances that the right war aims, strategies, policies, and campaigns will be identified, decisions that have the greatest probability of protecting the life of the political community, using well the lives of citizens-who-become soldiers, without putting the innocent overly at risk—not merely to establish who is dominant over whom.

Cohen’s account demonstrates that justice in war demands more than balancing winning and fighting well—war-fighting responsibilities. Waging war involves using and risking lives. Justice in the conduct of war demands that war-waging decisions and actions that result in lives being used and risked in ways that increase the probability they will be wasted or risked unnecessarily be called what it is: morally abhorrent behavior and those responsible, morally blameworthy.

As much progress as Cohen makes in understanding the war-waging dimension of *jus in bello*, it is not complete. He says little about execution. Dialogue—however good it is

and however likely it is to produce right decisions—must be followed by action. Decisions and plans have to be translated into coherent, military and non-military as well as domestic and diplomatic action. Cohen’s account says little of this translation. For Feaver, execution is a matter of monitoring regimes, specifically compliance monitoring: civilian monitoring to ensure what they want done, the way they want it done, get done. But, at least as presented in *Armed Servants*, the content of execution—decisions, orders, and directives—matters little, compliance matters more. For Cohen, content is important, but a discussion of execution is mostly absent. A full account of war-waging responsibilities must include both decision and execution.

With respect to the dialogue itself, both Feaver and Cohen correctly emphasize military subordination to civilian leaders. Both also discuss how civilian and military leaders should also press each other on war aims, strategies, and policies. What makes the dialogue work for Feaver is clear: fear of “being caught” by intrusive monitoring mechanisms, then “being punished.” Such an account is inadequate, for it exclude too much and in practice is unlikely to produce the kind of dialogue required. Cohen includes discussion of the respect and candor between senior political and military leaders that is necessary to make the dialogue work but gives slight account of the important role senior political leaders play—since they are the senior members of the “unequal dialogue”—in setting the right climate for the kind of dialogue that is necessary.

The next chapter will suggest answers to the questions Cohen does not address: what it takes to conduct a proper dialogue and what is needed to translate the decisions which emerge from a proper dialogue into action.

## Chapter Five:

### The Dialogue-Execution Cycle

This chapter shows that waging war involves not an unequal dialogue, but a set of near-continuous dialogues which produce decisions that are executed by sets of bureaucracies. These resultant decisions are then adapted as the realities of war determine which actions work, and which do not. The chapter begins with a discussion of friction, that phenomenon in war that makes even the simplest action difficult. Then the chapter provides a more complete description of the sets of dialogues necessary to wage war. Finally, the chapter discusses execution, translating decisions into action. The chapter ends by adding dialogue to execution, presenting a performance-oriented, dialogue-and-execution regime as that which is necessary to improve the likelihood of a war being waged prudently and justice in war at the strategic level obtaining. Such a regime is what is necessary to act justly at the strategic, war-waging level of war, consistent with what the lives of the innocent and the citizens-who-become-soldiers and life of the political community are owed by those senior political and military leaders who are responsible for risking and using those lives.

#### **Friction in War.**

Intellectually it's not that hard: conduct a proper dialogue among senior political and military leaders; identify war aims, strategies, campaigns, and policies that have good chance of success; translate those into action; and adapt as realities unfold. Actually, it's

very hard. It takes a lot of leadership and management effort and plenty of focused attention. Without such attention, the political and military bureaucracies will do what they always do—business as usual. This is no surprise to anyone associated with bureaucracies. They are designed to do the same thing repetitively, to maintain a routine, and to keep an organization moving on an even keel. Business as usual is the business of a bureaucracy, and bureaucracies are absolutely necessary. Large organizations—like the U.S. Departments of Defense and State, the Military Services, and geographic combatant commanders and their subordinate headquarters—could not operate without a bureaucracy. When such organizations face something new, however—especially if it is also something that is rapidly and continually changing—bureaucracies don’t do so well. War is just such a phenomenon. It is always new, always different, always atypical, and always changing rapidly. War is, therefore, something that poses great difficulty to a bureaucracy. To wage a war, senior political and military leaders must both use and break their bureaucracies, and therein lies the leadership and management challenge of execution.

“Everything in war is simple,” says Clausewitz, “but the simplest thing is difficult.”<sup>368</sup> He was talking primarily about war-fighting, the friction inherent in actions on the battlefield and in support of active campaigns. His comments, however, apply equally to war-waging, actions required of senior political and military leaders and the friction that occurs at the strategic level. “Friction,” he says, “is the force that makes the apparently easy so difficult.”<sup>369</sup> Accordingly, Clausewitz explains that friction is one of the factors

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<sup>368</sup> Carl von Clausewitz, *On War*, *op.cit.*, p. 119.

<sup>369</sup> Carl von Clausewitz, *On War*, *ibid.*, p. 121.



that distinguishes “real war from war on paper.”<sup>370</sup> He speaks of friction as physical, using a machine analogy: the smooth running machine slowed down by the physical effects of weather, terrain, and military movements. He also addresses ways in which psychological friction slows the military machine: fear, stress, and tiredness. The enemy, whose actions are deliberately taken to interfere with friendly operations, is another source of both physical and psychological friction. These and “endless minor obstacles” great and small all combine, according to Clausewitz, to slow the military machine.<sup>371</sup>

If he were writing today, he would have expanded his discussion of the sources of friction. *On War* was written prior to the development of large staffs and huge bureaucracies created in the late 19<sup>th</sup> century and expanded further during the 20<sup>th</sup> century responding to the need to coordinate large armies executing widely dispersed campaigns. Clausewitz also wrote prior to the advanced, integrative communications networks that currently proliferate from the individual soldier to senior political and military leaders. Napoleonic campaigns—the grist of Clausewitz’s study—were certainly conducted by large forces and over expansive distances (for the time), but nothing compared to the global operations of a world war, or the simultaneous operations in Afghanistan, Iraq, and against Al Qaeda and their affiliates. Scale creates a friction all its own. Friction is exactly why the apparently easy—conducting a proper dialogue among senior political and military leaders; identifying war aims, strategies, campaigns, and

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<sup>370</sup> Carl von Clausewitz, *On War*, *ibid.* p. 119.

<sup>371</sup> Carl von Clausewitz, *On War*, *ibid.* pp. 119-121. Also considered sources of friction, but treated in different chapters in *On War* are danger, pages 113-114, physical effort, pages 115-116, and the friction inherent in just finding out what is going on in the battle area—intelligence in war, pages 117-118.

policies that have good chance of success; translating those into action; and adapting as realities unfold—is actually very hard.

Friction is rife amid war-waging activities, and it comes from multiple sources. A modern day Clausewitz would write about organizational friction and bureaucratic friction. These kinds of friction contribute to slowing the military machine and distinguish real war from war on paper just as much as the physical and psychological friction about which Clausewitz wrote. Four sources of personal, organizational, and bureaucratic friction stand out: experience and background differential between senior political and military leaders, the scale of complexity associated with waging war, bureaucratic inertia within and among the multiple bureaucracies now necessary to wage war, and the limits of human beings. All four permeate nearly every aspect of war-waging decisions and execution.

Simply put, senior political and military leaders have quite different developmental experiences and backgrounds. The difference in perspectives is inherent in the two worlds, “given their different purposes, responsibilities, careers, and methods.”<sup>372</sup> Flexibility and ambiguity—in both concept and execution—helps build political consensus and thus lays the foundation for political success. This is the art that political leaders learn as they develop. The world in which military leaders develop their art is one in which exact and unambiguous orders, because of the nature of the battlefield, require flexibility in execution. The complexity of waging war is akin to a multi-dimensional Rubik’s cube that must be “solved” under conditions of extreme ambiguity,

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<sup>372</sup> Richard H. Kohn, “Building Trust: Civil-Military Behaviors for Effective National Security,” in Suzanne C. Nielsen and Don M. Snider, editors, *American Civil-Military Relations: The Soldier and the State in a New Era* (Baltimore, Maryland: the Johns Hopkins University Press, 2008), p. 271.

high-stakes pressure, and continual change. Senior political and military leaders must find solutions in the face of an enemy deliberately trying to “undo” whatever solutions those senior leaders emplace. Moreover, strategy, policy, and campaign solutions must not only “fit” the enemy situation, they must also be acceptable domestically and internationally. Last, these solutions must be executable by the set of national bureaucracies necessary to wage war.

Each bureaucracy—state, defense, and Congress, to name just a few—has its own culture and processes. Making any one work is hard, for each has its own way. Making them all work in sufficient concert is, well, harder still. Waging war is, therefore, inherently complex and requires both political and military art. The fact is, however, that the senior political and military leaders, whose responsibility it is to work with each other in this complex, Rubik’s cube, high-pressure environment, don’t often work together.

Moreover, the Rubik’s cube of war waged by a democracy involves the Legislative Branch of government, either through pre-decisional briefings and discussions, in testimony to special committees, or through individual or small group engagements of key Congressional leaders.<sup>373</sup> Waging war in a democracy also involves engaging with the media. Fortright testimony to Congress, media engagements, and public speeches must contain accurate descriptions of successes and failures, progress and obstacles. These aspects the waging war in democracies adds to the friction of the already complex, high-pressure, and dynamic “Rubik’s cube” which senior leaders must solve.

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<sup>373</sup> Robert M. Gates, *Duty, op.cit.*, pp. 19-20, 24, 50, 60-1, 84-6, 440, and 575.

Finally, senior political and military leaders remain human beings. As such they are limited in energy and capacity, and they are subject to foibles and folly just as is anyone else. Some are people of strong intellect and character and others not; most somewhere in between. Some senior political and military leaders have the courage and capacity to challenge peers and seniors in a dialogue over substantive issues and the strength to be so challenged; others avoid or shut down such discussions or use *ad hominem* attacks to establish dominance. Some senior political and military leaders run large organizations well and provide excellent leadership in the bureaucracies for which they are responsible; others are virtually inept. Some have the wisdom to understand the necessity for the kind of dialogue described in the previous chapter; others fear such a dialogue considering it a challenge to their position.

Put all this together and the degree of friction becomes self evident. What is apparently easy, becomes difficult. Personal, organizational and bureaucratic friction is real, and it affects both the war-waging dialogue and the translation of the results of that dialogue into coherent action.

Difficulty does not obviate necessity, however. War is a continuous political-military activity that requires an equally continuous civil-military dialogue-execution regime, not a discrete dialogue in which military leaders provide episodic “advice” or “input,” then wait to be told what to do. Nor is it a discrete action in which political leaders provide “orders and direction,” then wait to see what happens as the military executes.

### **Sets of dialogues.**

As well as Cohen captures a good bit of the difficulty and complexity of the dialogue between and among senior political and military leaders in *Supreme Command*, his description is of the tip of the proverbial iceberg. In *Duty*, Secretary Gates says as much: “Political scientists, historians, and reporters are often completely unaware of events or experiences unseen by the public eye that influence important decisions....presidents and other senior officials listen to a wide array of voices other than those in official government channels.”<sup>374</sup> In both the Bush and Obama administrations, Gates describes multiple types of dialogues, in multiple forums, and with a variety of leaders and thinkers—all feeding discussions among a smaller set of senior civilian and military leaders responsible for structuring options and recommendations for a Presidential decision.

Gates writes of many private and small group discussions. Some were conducted to ingest details and increase understanding; others to smoke out disagreements with conventional wisdom and discover alternative reasoning. Some were face-to-face in the theaters of war or in the capitals of allies and coalition partners, others done on secure video conferences or on the telephone. There were discussions with the President and Vice President, the National Security Advisor and the National Security Staff, Cabinet Secretaries and their deputies, Ambassadors, senior U.S. military officials—the Chairman of the Joint Chiefs and the Chiefs of the military services, U.S. field and geographic commanders, Members of Congress and their staff, senior officials within the Department of Defense, reporters from various media, think tank personnel, and academics. There

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<sup>374</sup> Robert M. Gates, *Duty*, *ibid.*, p. 307.

were discussions with representative of similar sectors within other countries—allies, friends, and coalition partners. He also describes multiple, often simultaneously conducted reviews that fed into the recommendations staffs made to more senior leaders. Some were done by the Departments of Defense and State, and some done by the National Security Staff. Others were done by the Joint Staff as well as the staffs of field commanders or regional geographic commanders. Still others were done by think tanks or by individual academics.<sup>375</sup>

Cohen's account of the unequal dialogue focuses primarily upon the small set of senior civilian and political leaders in discussion with the President. He hints at the continuing nature of this dialogue when he discusses Churchill and Clemenceau.<sup>376</sup> As such, it is accurate as far as it goes. Gates's account, however, provides a look into the expansive nature of the dialogue—the discussions and arguments that precede the final “unequal dialogue” between senior political and military leaders leading to a decision. These preceding discussions are an important part of the dialogue, for if they are well conducted, they can help ensure that the final dialogue is as factually based as possible, is informed by alternative analytic perspectives, considers a range of feasible alternative courses of actions, and reflects the risks and opportunities involved. An unequal dialogue without these preceding discussions does a dis-service to the President because his decisions will have been made with inadequate information, analysis, options, and risk/opportunity assessments.

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<sup>375</sup> Robert M. Gates, *Duty, ibid.*, pp. 8, 16-17, 19-20, 24, 31, 33, 38, 40-45, 50, 56-7, 59-61, 63-4, 67-72, 74, 81, 84-86, 93-4, 96, 101, 103, 120, 134, 147, 151, 200, 208, 221-22, 228-30, 231, 233, 236, 266, 268-69, 278, 283, 289-91, 297-300, 307, 323, 337-38, 348-49, 352, 354-57, 361-71, 373, 378-79, 381-83, 422, 440, 464, 474-81, 512, 514-15, 518, 539, 547-48, 562-65, and 575.

<sup>376</sup> Eliot Cohen, *Supreme Command, op.cit.*, pp. 77, 99, and 208.

Together, Cohen's and Gates' accounts provide a clearer picture of what is involved constructing war aims, strategies, policies, and military operations that have a high probability of being "right," or at least "less wrong than those of the enemy." Together, they also provide a clearer picture of what is necessary to conduct dialogues like these: a proper leadership climate, protected space, time, leader/managerial focus, and attention to outcomes.

A proper, war-waging dialogue needs a sufficient leadership climate. Cohen's unequal dialogue calls for a collaborative, even if sometimes conflictual, relationship between senior political and military leaders, a relationship that takes for granted the fundamental subordination of soldiers to civil control.<sup>377</sup> Gates provides more detail as to what such a dialogue needs: senior civilian leaders to "set an atmosphere so people would be more inclined to speak up," an "environment where all points of view can be expressed and have a robust debate."<sup>378</sup> This is an important point. As the leaders with the dominant legal and constitutional position and with the responsibility for making final decisions, senior political leaders have the burden to set the right climate for dialogue. In fact Gates believed that it was "a major task of the secretary of defense...to help manage [the relationship between military and civilian leaders] and ensure that the president listens to professional military advice that he may not want to hear, and that the senior officers offer their best and most candid advice and obey loyally, especially when they are overruled."<sup>379</sup>

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<sup>377</sup> Eliot Cohen, *Supreme Command*, *ibid.*, p. 10.

<sup>378</sup> Robert M. Gates, *Duty*, *op.cit.*, pp. 120 and 369.

<sup>379</sup> Robert M. Gates, *Duty*, *ibid.* p. 574.

Even this expanded description, however, does not quite capture the totality. Dialogue requires the participants to listen to each other with open minds. Each must press the other and be willing to be pressed. Military officers must “tell blunt truths” and have candor as a core value,<sup>380</sup> but telling blunt truths to brick walls is useless and seen to be the futile activity it is. Secretary Gates sums it up this way, “I will involve you. I will listen to you. I expect your candor...I want to know when you are in disagreement with each other or with me. I want to know if you think I’m about to make a mistake—or have made one....I respect what each of you does and your expertise. I will need your help....But, once decisions are made, we must speak with one voice.”<sup>381</sup> Here Secretary Gates recognizes the difference between having an opportunity to provide one’s advice and being heard. General Shinseki, in the previous examples, was given the opportunity to provide his advice; he was hardly heard. When participants, whether civilian or military, are dismissive of the perspectives of others, the dialogue breaks down and is quickly replaced with a facsimile, or worse—with no dialogue at all.

A broken dialogue looks like the one that governed the waging of the Vietnam War and the one that was in place during much of the time the wars in Afghanistan and Iraq were being waged. In these cases, although the final civilian decision authority was never questioned, the nation was not well served, the lives of the citizens-who-became-soldiers were not well used, the lives of the innocent were risked unnecessarily, and justice in the conduct of war did not obtain.

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<sup>380</sup> Robert M. Gates, *Duty, ibid.*, p. 134

<sup>381</sup> Robert M. Gates, *Duty, ibid.* p. 84.



War-waging dialogue requires protected space. Transparency is important in democracies, but the arguments over what exactly is happening in the war, the discussion of alternatives, and the debate over the “best” course of action must take place “privately.”<sup>382</sup> Premature public discussion—whether “leaked” or overtly provided, whether by military or civilians—sows distrust and suspicion among the participants of the dialogue, which make the dialogue harder than it already is. Further, the “leak” is often a technique used to manipulate the outcome of a dialogue. Such manipulation—whether done by a senior political or military leader, or by their subordinates or staff—is actually the antithesis of dialogue, a way to pretend to participate in a legitimate dialogue when actually using position, power, and information to get a desired outcome that may not emerge from the dialogue otherwise.

There are times when public discussions are not only important but necessary, especially in a democracy. Some of these discussions—whether with members of Congress, the media, or others—precede a final decision. These must be done with integrity and candor, but also carefully so that they contribute to finding “answers” to war aims, strategies, and policies with the highest probability of success rather than unravel pending decisions. The 2006-2008 public debate over what was the right policy in Iraq showed how difficult public discussion can be. On one hand, parts of the public debate were necessary and contributory to better strategy and policy decisions. On the other hand, parts were just public manipulation of facts that politicized the dialogue for personal reasons.

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<sup>382</sup> Robert M. Gates, *Duty*, *ibid.* p. 370.

What these debates show is that a proper war-waging dialogue takes time. Casting the dialogue in the singular, as an “unequal dialogue,” does not reflect the reality of waging war: the dialogue actually consists of sets of repetitive, overlapping, and iterative dialogues from which practicable aims, strategies, policies, and military operations can emerge. Continuing sets of repetitive, overlapping, and iterative dialogues—some private and some public—reflects Churchill’s belief that “the conduct of war emerged, not from any one ‘grand plan’ or strategy, but out of a series of conflicting and changing views, misunderstandings, personal interests and confusions.”<sup>383</sup> It also matches Clemenceau’s use of “a stream of decisions, not an overall choice in favor of one or the other.”<sup>384</sup> Thus patience and persistence among senior political and military leaders becomes as necessary as pressing and listening to one another. A singular dialogue neither matches the reality described by Churchill, Clemenceau, or Gates, nor does it corroborate the “provide me your advice as input to my decision” model of a civil-military relationship or the “I know what I want done and how I want it done; you just do it” model. These models are not satisfactory because they increase the probability that the political community will not be protected, the lives of citizens-who-become-soldiers will not be used well, and the lives of the innocent risked unnecessarily. Further, these kinds of pseudo-dialogues risk the legitimacy of the war. Cutting the dialogue short, overly restricting the sets of dialogues that are necessary, or manipulating the dialogue—all are perversions of senior political and military war-waging responsibilities.

War is dynamic, as is politics. Analysis conducted and decisions made at the start of the war are neither static nor everlasting. As hard as it is to conduct the initial sets of

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<sup>383</sup> Eliot Cohen, *Supreme Command, op.cit.*, p. 99

<sup>384</sup> Eliot Cohen, *Supreme Command, ibid.*, p. 77.

dialogues and arrive at a satisfactory solution to war aims, strategies, policies, and at least the opening campaign, these initial decisions are only the beginning. The same give and take must be sustained throughout the war.<sup>385</sup> Change is the only constant in war; those responsible for waging war, therefore, must commit themselves to constant adaptation. Constant adaptation requires a set of constant reality-based dialogues, and time.

War-waging dialogues also require leader and managerial focus. One of the many example Secretary Gates records is a “five-hour meeting” in Afghanistan with Generals McChrystal (the overall commander in Afghanistan) and Petraeus (McChrystal’s U.S. boss as the commander of U.S. Central Command), Admirals Mullen (Chairman, Joint Chiefs of Staff) and Stavridis (McChrystal’s NATO boss as the Supreme Allied Commander, Europe), Michele Flournoy (Gates’ Undersecretary of Defense for Policy), Lieutenant General Rodriquez (deputy to McChrystal responsible for ground operations in Afghanistan), and a few members of staff.<sup>386</sup> This meeting was one of many leading to the assessment and recommendation that General McChrystal was tasked to make within the first 90 days of assuming command in Afghanistan. Later, Gates recalls “nine, very long (two-to-three hour) meetings” just on General McChrystal’s 2009 Afghanistan assessment and strategy recommendations.<sup>387</sup> While this dialogue was being conducted, events continued to unfold in both Afghanistan and Iraq, as well as those associated with the wider war against Al Qaeda and its affiliates. Nothing stood still as one decision was being made, not on the battlefield or in the capitals of the countries waging war. The dynamism of war and politics demands equal dynamism in the decision

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<sup>385</sup> Eliot Cohen, *Supreme Command*, *ibid.*, p. 209.

<sup>386</sup> Robert Gates, *Duty*, *op.cit.*, p. 353.

<sup>387</sup> Robert Gates, *Duty*, *ibid.*, p. 367 and following.

making processes associated with making war waging decisions. Losing focus in this kind of dynamic environment is easy; the need for sustained, focused attention on the part of the senior political and military leaders responsible for waging war is apparent.

Busyness, however, tends to dissipate focus. As important as were the wars in Iraq and Afghanistan and against Al Qaeda, they were not the only security items that needed the attention of Defense Department and National Security Principals. For example, at one point, the three wars that the U.S. was waging unfolded against a backdrop of the Iranian nuclear program, Somali pirates, North Korean nuclear tests, as well as a variety of developments in Russia, China, Israel, and Pakistan—to name a few. Further, there were domestic issues, chief among them the American economic crisis and the many consequential decisions that had to be made as a result. Further still, there were “routine issues” like Congressional testimony, management decisions associated with running the Department of Defense, budget submissions, decisions concerning major acquisitions, personnel assignments, and assorted official representational duties with visiting foreign defense officials. Blandly, Secretary Gates sums it up this way, “In short, despite the tremendous power inherent in the job, the secretary of defense must deal with multiple competing interests both within and outside the Pentagon and work with many constituencies, without whose support he cannot be successful.”<sup>388</sup>

All of this makes the right kind of continuing civil-military dialogue all the more necessary. For without directed focus and attention of senior civil and military leaders not only would unity of effort start to unravel but also each bureaucracy for which these leaders are responsible would do what it does best—not change, “business as usual.” The

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<sup>388</sup> Robert Gates, *Duty*, *ibid.*, p. 83.

result: limited unity of effort and cohesiveness of action toward common war aims. This is the nature of any complex activity conducted by multiple bureaucracies. This is the nature of waging war.

Senior political and military leaders are pulled in so many directions that one of the ever-present temptations that face them is to short cut the process, falling back on one version or another of Huntington's "objective control theory," the "normal theory" of civil and military role differentiation: political leaders decide and direct; military leaders execute. Another temptation comes from the principal-agent framework: just do what I want done, the way I want it done. Yielding to these temptations, political leaders might want to say, "just give me your best military advice so we can make a decision," or military leaders might want to say, "just tell me what to do and let me do it." Such temptations must be resisted, "for a politician to dictate military action," Cohen says at the outset of *Supreme Command*, "is almost always folly."<sup>389</sup> And for a military leader to sit back and allow strategy and policy to be formed in a vacuum is equal folly. Furthermore, in reality, there is no arbitrary line dividing civilian and military war-waging responsibilities. As has been evident throughout this study, with respect to waging war, there is no neat way of carving off distinct spheres of either pure political or pure military action—except that senior political leaders have the final decision authority.<sup>390</sup> War simply requires the sustained, focused attention of the senior political and military leaders responsible to wage it.

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<sup>389</sup> Eliot Cohen, *Supreme Command*, *op.cit.*, p. 12.

<sup>390</sup> Eliot Cohen, *Supreme Command*, *ibid.*, p. 8.

Finally, a properly conducted dialogue focuses on output: “getting it right,” that is making decisions that increase the likelihood of attaining war aims and decrease the probability of putting the innocent and the political community at risk or using poorly the lives of citizens-who-become soldiers. In war-waging dialogues, differences in opinion as to what is happening arise not only among the senior political and military leaders, but also among the wider sets of other groups—domestic and foreign, military and civilian—who make up the network of agencies, organizations, and leaders associated with waging war. Differences of understanding lead to different assessments, options, and recommended courses of action. Sometimes these differences are profound, as Gates describes the differing position between Vice President Biden and other members of the national security team over the surge in Afghanistan.<sup>391</sup> In these cases, focusing on outcomes is much more important than “winning” the debate or achieving “dominance” over those who oppose one’s view.

Outcomes—likelihood of success and progress toward achieving that success—are the very purposes of the dialogue. Further, outcomes determine legitimacy, at least in the eyes of the American citizens. Legitimacy and public support for a war flow from a citizenry who believe the war is right and who believe that their nation, or political community, can win and are making progress toward winning.<sup>392</sup> Legitimacy and public support does not flow from than “winning” the debate or achieving “dominance” over

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<sup>391</sup> Robert Gates, *Duty*, *op.cit.*, pp. 335-386.

<sup>392</sup> Peter Feaver, Jason Reifler and Christopher Gelpi, “Success Matters: Casualty Sensitivity and the War in Iraq,” ScholarWorks, Georgia State University, Winter 2006. Available at: [http://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1070&context=political\\_science\\_facpub](http://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1070&context=political_science_facpub). This essay continues work done several years earlier on the same topic and published in Peter Feaver and Christopher Gelpi, *Choosing Your Battles: American Civil-Military Relations and the Use of Force* (Princeton, New Jersey: Princeton University Press, 2004).

those who oppose one's view only to then execute decisions that reduce the likelihood of progress toward achieving common war aims.

A properly conducted set of dialogues, extended, inclusive, and iterative require an adequate leadership climate, protected space, time, leader and managerial focus, and an attention to outcomes. Such a set of dialogues is only half of senior civil and military leaders' war waging responsibilities. The other half is translating the results of the dialogue into action then adapting as battlefield and political events unfold. Secretary Gates recognized both sides of the job in saying that he "participated in the development of our strategies both within the Pentagon and in the White House, and then had primary responsibility for implementing them...."<sup>393</sup> The execution half of waging war involves using the civil and military bureaucracies to carry out a continuous cycle of activities: execute the strategy and policy decisions that emerge from their initial dialogue, monitor changes that occur in war—both on the battlefield and in the political communities, adapt initial strategy and policy decisions as the realities of war determine which work and which do not, execute these new decisions, and go through the cycle again. In reality, therefore, the initial dialogue never stops, it just becomes part of the execution cycle—hence, Churchill's series of discussions and Clemenceau's streams of decisions.

### **Execution: making the bureaucracies work.**

Secretary Gates would concur with Churchill and Clemenceau with respect to the on-going iterative nature of both the decisions and actions necessary to wage war. The

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<sup>393</sup> Robert M. Gates, *Duty, op.cit.*, p. 25.

dialogue that Gates describes and that Cohen shows had been useful to those studied in *Supreme Command* is not a compliance oriented dialogue, as *Armed Servants* suggests. Rather, the dialogue is, or should be, performance oriented. That is, a dialogue aimed at finding the gaps between actual reality as it is unfolding during a war—on the battlefield, amid the political community (or communities), and in the capital (or capitals)—and the desired reality—success at achieving war aims. Once these gaps are found, senior political and military leaders then must adapt—understand, to the degree possible, what is actually happening; decide whether new developments required adjustments to aims, strategies, policies, or military campaigns, and if so, what those adjustments should be; then issue the requisite directives and execute—quickly because if one’s enemy executes better, they win. Sometimes the adaptation involves changes to strategies and policies, even war aims themselves; other times, the adaptation involved changes in personnel, coalition partners, or resource levels. Outcomes matter. The function that senior political and military leaders perform in war is this: conducting a war, in both its fighting and waging aspects, better than their opponents.

The extensive, inclusive, collaborative, contentious, and continuous sets of dialogues help maintain a focus on “exposing reality.” The sets also help to identify the gap between that reality and desired outcomes. Last, the sets help in adapting aims, strategies, policies, and campaigns accordingly.<sup>394</sup> These war-waging responsibilities are as essential to the conduct of war as is fighting. In businesses, the cost of chronic underperformance is money, market share, and perhaps the job and reputation of the chief executive; in war, the cost is lives—whether those of the innocent or of citizens-who-

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<sup>394</sup> The explicit link between the dialogue and execution is derived from: Larry Bossidy and Ram Charan, *Execution: The Discipline of Getting Things Done* (New York: Crown Business, 2002).



become-soldiers—and, in some limited cases, the very existence of the political community. When waging war, dialogue and execution matter.

*Supreme Command* leaves execution absent from its treatment of “soldiers, statesmen, and leadership in wartime.”<sup>395</sup> Perhaps this omission is a matter of just not discussing the obvious. In the case of war, however, the obvious cannot be assumed. Properly conducting the sets of dialogues and arriving at initial war aims, strategies, policies, and military operations is but half the job. The other half is executing and adapting, no easy tasks as Robert Komer demonstrates in *Bureaucracy Does Its Thing*, a study of U.S. bureaucracies during the Vietnam War, at least up to 1972 when RAND published his research.<sup>396</sup>

“Why,” Komer asks in 1972 when the war was not yet over, “has a cumulative enormous U.S. contribution...had such limited impact for so long? Why, almost regardless of the ultimate outcome, has U.S. intervention entailed such disproportionate costs and tragic side effects?....Why did we do so poorly for so long?”<sup>397</sup> Komer is asking questions about execution, about the gap between actual reality and desired reality. The substance behind Komer’s questions reappears in the form of impressions Secretary Gates formed soon after he joined the Bush administration as the Secretary of Defense. “Even though the nation was waging two wars,” he observes, “neither of which we were winning, life at the Pentagon was largely business as usual when I arrived....It was clear why we had gotten into trouble in both Iraq and Afghanistan...when the

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<sup>395</sup> Eliot Cohen, *Supreme Command*, *op.cit.*, from the subtitle.

<sup>396</sup> R. M. Komer, *Bureaucracy Does Its Thing: Institutional Constraints on U.S.-GVN Performance in Vietnam* (Santa Monica, California: RAND, 1972)

<sup>397</sup> R.M. Komer, *Bureaucracy Does Its Thing*, *ibid.*, p. v.

situation began to deteriorate, the president, his senior civilian advisers, and the senior military leaders had not recognized that most of the assumptions that underpinned early military planning had proven wrong, and no necessary adjustments had been made.”<sup>398</sup>

That is, the system of performance-oriented dialogue with consequential adaptive decisions and actions, if it had been in place at all, had broken down.

In both the Vietnam case and the pre-Gates Afghanistan and Iraq cases, the dialogue between senior political and military leaders was at best a pseudo-dialogue. And the dialogue seemed insufficiently connected to execution and outcomes. Such dialogues lower the probability of arriving at aims, strategies, and policies with reasonable likelihood of success. Such dialogues also lower the probability of successful adaptation and execution. Such dialogues increase the likelihood of unnecessary risk to the innocent and to political communities and the likelihood of wasting the lives of citizens-who-become-soldiers.

How similar is Secretary Gates’ observation to some of the main conclusions in Komer’s study: that a complete search of Vietnam War documents finds that a relatively sophisticated understanding of the culture and environment in which the war took place was present; that fairly detailed knowledge of the lack of progress and the reasons behind the lack of progress was widely known among senior political and military leaders; and that senior political and military leaders also realized by the mid-to-late 1960s that the war could not be won in the way it was being fought.<sup>399</sup> The senior political and military leaders simply could not translate what they knew into action.

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<sup>398</sup> Robert M. Gates, *Duty, op.cit.*, p. 115.

<sup>399</sup> R.M. Komer, *Bureaucracy Does Its Thing, op.cit.*, pp. v-xiii.

They were unable make such a translation in part because of the dysfunctional civil-military relationships among the principals and the bureaucracies they controlled. Moreover, what they knew about the war did not match the image of the war they had created. The decisions they made were based more on their created un-reality than reality. Further, they were unable to translate what they knew into action because of their basic inability to manage and adapt the organizations they led. Others reached similar conclusions about Vietnam.<sup>400</sup> In the end, Komer concludes, that our experience in Vietnam shows “how difficult it is to translate...lessons into...performance. [Such translation requires] a consistent, deliberate effort to offset the inevitable tendency of bureaucracies to keep doing the familiar and to adapt only slowly and incrementally.”<sup>401</sup>

Instead of waging and fighting a war in Vietnam that matched reality, the U.S. fought the war it knew how to fight. In the process, 57,000 citizens-who-became-soldiers lost their lives. Even more Vietnamese were killed. And these tallies do not include the destruction of property and terrain, North and South. Nor do these tallies include the decades of negative effects in America’s social and political fabric. Komer’s study asked how such a moral travesty could occur.

In the end, he concludes that “whatever the wisdom of the...decisions to intervene in Vietnam, there is...much to be learned from the way we went about it....regardless of what policy called for, [U.S. governmental] institutions tended to play out their

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<sup>400</sup> See also, Neil Sheehan, *A Bright Shining Lie: John Paul Vann and America in Vietnam* (New York: Random House, 1988); Andrew F. Krepinevich, Jr., *The Army in Vietnam* (Baltimore, Maryland: The Johns Hopkins University Press, 1986); Douglas Kinnard, *The War Managers* (Wayne, New Jersey: Avery Publishing Group Inc., 1985); Lewis Sorely, *Honorable Warrior*, op.cit.; and H.R. McMasters, *Dereliction of Duty*, op.cit.; and J. Powers, editor, *The Pentagon Papers*, Abridged addition for the Millennial Generation (Los Angeles, California: PowerPlayz.com, 2012).

<sup>401</sup> R.M. Komer, *Bureaucracy Does Its Thing*, op.cit., pp. xii and 156.

existing...repertoires....And there was little top-level follow through or adequate management machinery to force them into different patterns of response. Largely as a result, much of what we did turned out to be futile, wasted, and even irrelevant....We perceived the difficulties we confronted better than our responses would suggest.”<sup>402</sup>

Here, Komer addresses the strategic dimension of the conduct of the war, specifically the war-waging decisions and actions taken by senior political and military leaders, not the tactical dimension of those who fought. In one conversation with President Obama, Secretary Gates addresses these war-waging responsibilities by saying, “Mr. President, you and I—more than any other civilians—bear the burden of responsibility for our men and women at war....[in order for their sacrifices not] to be in vain....What we owe them is not only our support, but a clear strategy and achievable goals.”<sup>403</sup> Secretary Gates’ words to President Obama echo President Bush’s remarks when announcing the 2007 surge in Iraq when he clearly referred to what the government owes the citizens-who-become-soldiers so that their lives are used well: properly identified war aims, strategies, policies, and military campaigns as well as political and military bureaucracies that work to translate decisions and plans into actions.<sup>404</sup>

Coherent translation of decisions and plans into action was certainly not the case described by Dov Zakheim in *A Vulcan’s Tale* or in Ambassador Newmann’s *The Other War* concerning Afghanistan and summarized earlier in chapter 2. Rather both describe the inability to implement strategies and policies and a neglect of following decisions

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<sup>402</sup> R.M. Komer, *Bureaucracy Does Its Thing*, *ibid.*, p. 151.

<sup>403</sup> Robert M. Gates, *Duty*, *op.cit.*, p. 366.

<sup>404</sup> George W. Bush, *Decision Points*, *op.cit.*, p. 378. “The situation in Iraq is unacceptable to the American people—and it is unacceptable to me. Our troops in Iraq have fought bravely. They have done everything we asked them to do....It is clear that we need to change our strategy in Iraq.”

with appropriately coordinated execution. Neither did Zakheim and Newmann describe adaptive organizational structures and processes created specifically to deal with the dynamic challenges of the Afghanistan and Iraq wars, the kinds adaptive behavior exhibited by the senior political and military leaders in the face of the Civil War and described in chapter 2 or the kinds created during World War II and described in chapter 1. Given the many unique dimensions of both the Afghanistan and Iraq war, the fact that both were going on simultaneously, both included elements of irregular warfare, and both involved the complexity of coalitions, an emphasis on coordinated execution would seem to have been a natural point of emphasis.

The opposite was true, however. The difficulties in execution and adaptation that Komer describes are those that frustrated Gates who describes the Department of Defense as “structured to plan and prepare for a war but not to fight one.”<sup>405</sup> Planning and preparing are steady-state activities conducted over time; change in this environment is slow and incremental. These are important tasks and are the kind that bureaucracies do well; that’s why they are necessary. Fighting a war, however, requires continual adaptation to a number of political and military rapidly changing situations.<sup>406</sup> These kinds of task require either changes to the bureaucracy itself or extra-bureaucratic managerial action. Mature extensive bureaucracies are very hard to change. So to make the civil and military bureaucracies work in war usually entails new structures and processes specifically designed for performance-oriented, dialogue-and-execution regime. “Time and again, “ Secretary Gates laments, “I would have to tackle that damnable peacetime mind-set inside the Pentagon....the difference between getting a

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<sup>405</sup> Robert M. Gates, *Duty, op.cit.*, pp. 116, 126-27, 133, and 147.

<sup>406</sup> Robert M. Gates, *Duty, ibid.*, p. 447.

decision tomorrow versus next week or delivery of a piece of technology next week versus next month is huge. [The Department of Defense] has been at war for over six years. Yet we still use the processes that were barely adequate for peacetime operations and impose a heavy cost in wartime.” The structures and processes necessary for a performance-oriented, dialogue-and-execution regime may last only as long as the war, but *ad hoc* or not, they are a necessary element to wage war successfully.

A performance-oriented, dialogue-and-execution regime is the kind of regime that President Lincoln and his civil and military subordinates created to wage the Civil War. It is also the kind of regime President Roosevelt and his team created to wage World War II. It is the kind of regime that President Johnson and his civil and military leaders failed to create during the Vietnam War. And it is the kind of regime that has been, at best, episodic in the wars following the September 11, 2001 attack on the United States.

### **Dialogue, execution, and responsibility.**

A performance-oriented, dialogue-and-execution regime increases the probability of identifying the “right” set of initial set of war aims, strategies, policies, and military campaigns—one that have a higher probability of success. This kind of regime also increases the probability of correctly adapting the initial set of decisions. Using such a regime does not guarantee infallibility. Rather, the guarantee is more limited; it is merely an increase in the probability of prudent action and of using well the lives of citizens-who-become-soldiers, protecting the political community, and limiting risk to the innocent. Such a regime also increases the likelihood of creating and sustaining the

legitimacy of a war. Without such a regime, the probability increases that war aims, strategies, and policies may be conceptually correct or politically desirable, but un-executable because they are disconnected from reality. Simply put, senior political and military leaders need this kind of regime to fulfill their war-waging responsibilities.

A performance-oriented, dialogue-and-execution regime needs a set of leaders who are committed to executing decisions that emerge from a proper set of dialogues, whether they agree completely with those decisions or not. Such a regime also needs leaders who are committed to allocating enough time and attention to executing decisions long enough to see whether they are working. Such a regime needs leaders who can evaluate the outcomes of execution honestly and objectively so that they can adapt—take the next set of decisions and actions. Finally, such a regime needs civil and military leaders who can actually run the bureaucracies for which they are responsible. In sum, the requirements necessary for execution are quite similar to those necessary for a properly run set of dialogues.

These requirements appeared not to be entirely present, according to Secretary Gates, during the 2009 decision to increase force levels and change strategies in Afghanistan. “In my entire career,” he writes, “I cannot think of any single issue or problem that absorbed so much of the president’s and the principal’s time and effort in such a compressed period. There was no angle or substantive point that was not thoroughly examined.”<sup>407</sup> In the end, the President decided on a “mission that the public and the politicians could easily understand: *Deny* the Taliban momentum and control, *facilitate* reintegration [of Taliban fighters], *build* government capacity selectively, *grow* the

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<sup>407</sup> Robert Gates, *Duty*, *ibid.*, p. 370.

Afghan security forces, *transfer* security responsibilities, and *defeat* Al Qaeda.” (italics in original)<sup>408</sup> Following this decision, the debate concerned how to resource this strategy; several alternatives were discussed thoroughly. Both the strategy and resource debate were hotly contended.<sup>409</sup> “The aggressive, suspicious, and sometimes condescending and insulting questioning of our military leaders,” Gates writes, “made them overly defensive....A more collegial process, one that tried to identify points of agreement rather than sharpen differences, would have had a more harmonious conclusion and done less damage to the relationship between the military and the commander in chief.”<sup>410</sup> The actual debate caused a significant rift between some senior political and military leaders. Those whose strategy and resource levels were not selected by the President began, in Secretary Gates’ words to “gather every negative bit of information about developments in Afghanistan and use them to try to convince the president that they had been right and the military wrong. That began before the first surge soldier set foot in Afghanistan.”<sup>411</sup>

Secretary Gates summed it up this way, “the president made a tough decision on the surge in Afghanistan in November 2009, and he had...made me, [Admiral Mike] Mullen, [General David] Petraeus, and [General Stan] McChrystal swear a blood oath that we would support his decision. Unfortunately, [Vice President Joe] Biden and his staff, the White House staff, and the National Security Staff apparently had not taken the same oath of support. From the moment the president left West Point [where he announced his strategy and resource decisions], they worked to show he had been wrong, that the

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<sup>408</sup> Robert Gates, *Duty, ibid.*, p. 375.

<sup>409</sup> Robert Gates, *Duty, ibid.*, pp. 335-386.

<sup>410</sup> Robert Gates, *Duty, ibid.*, pp. 384-385.

<sup>411</sup> Robert Gates, *Duty, ibid.*, p. 385.



Pentagon was not following his direction, and that the war on the ground was going from bad to worse.”<sup>412</sup>

Without leaders committed to executing decisions long enough to see whether they work, the likelihood of coherent action is minimal and the reality-based grist for the next set of decisions and adaptations that have to be made is distorted from the start. A proper performance-oriented, dialogue-and-execution regime, therefore, has little chance to exist let alone succeed. If this kind of leadership behavior existed in a corporation, the bottom line would be affected; perhaps the corporation may go bankrupt. In war, the cost is much higher. Senior leaders behaving as Secretary Gates describes when the lives of citizens-who-are-now-soldiers and the innocent are at stake are not just poor leaders or managers, their behavior is morally reprehensible. Any President’s decisions deserved a chance to work, and he is owed loyal support to make them work—by both his military and civilian subordinates. If his decisions are proven incorrect or ineffective, then the dialogue should start again and adaptations made.

In addition to adequate leadership, a proper performance-oriented, dialogue-and-execution regime also requires leaders to manage the work of their bureaucracy to produce what is needed to execute those decisions. Since bureaucracies do not “do new or rapid change” well—the very realities of war—senior political and military leaders responsible to wage war must manage their organizations more carefully than what is required in “normal” times. Often they must go beyond more careful management and create new management processes, forums, or organizations to accommodate the dynamism of war.

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<sup>412</sup> Robert Gates, *Duty*, *ibid.*, p. 475.

Failure in execution reduces the probability of wartime success, for “no worthwhile strategy can be planned without taking into account the organization’s ability to execute it.”<sup>413</sup> This is true for corporate leaders and it’s true for the senior political and military leaders who wage war. The processes of identifying war aims, strategies, policies, and military operations then executing and adapting are “tightly linked to one another, not compartmentalized” between sets of leaders and their staffs.<sup>414</sup> With respect to waging a war, if senior political and military leaders do not learn and adapt but continue to conduct a war using known inefficient and ineffective strategies and policies, or through known inefficient or ineffective organizations and management processes, those leaders should be morally blameworthy—even if not legally guilty—for the results of their actions just as soldiers and their leaders ignoring the war convention would be on the battlefield.

The American strategist Bernard Brodie, in his book *War and Politics*, puts it this way, “unless [a war] is in pursuit of a reasonable political objective, any nation resorting to war is simply perpetuating wanton destruction of life and goods on a vast scale.”<sup>415</sup> Wanton destruction and waste also result if the ends are reasonable, but the decisions concerning strategies, policies, resources, military operations, and the execution of these decisions do not contribute to attaining those reasonable ends. Brodie concludes by paraphrasing an oft-used maxim, “war is not only too important to be left to the generals, but too important and far too complex to be handled adequately by any one profession.”<sup>416</sup>

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<sup>413</sup> Larry Bossidy and Ram Charan, *Execution, op.cit.*, p.21.

<sup>414</sup> Larry Bossidy and Ram Charan, *Execution, ibid.*, p. 23.

<sup>415</sup> Bernard Brodie, *War and Politics* (New York: MacMillan Publishing Co., Inc., 1973), p. 6.

<sup>416</sup> Bernard Brodie, *War and Politics, ibid.*, p. 473.

A performance-oriented, dialogue-and-execution regime increases the probability of identifying reasonable war aims as well as military and non-military strategies, policies, and campaigns. Such a regime also increases the likelihood of properly adapting to the dynamic realities of war. This kind of regime, therefore, improves the odds that the war will be waged prudently with progress made toward the reasonable aims decided upon.

A 2006 study, “Success Matters: Casualty Sensitivity and the War in Iraq,” analyzed public support for the Iraq war<sup>417</sup> The study shows that the “body bag” count alone is an insufficient indicator of the legitimacy and public support for a war.<sup>418</sup> The core conclusion of the authors is “that the U.S. public’s tolerance for the human costs of war is primarily shaped by the intersection of two crucial attitudes: beliefs about the rightness or wrongness of the war, and beliefs about a war’s likely success.” While the two attitudes affect one another, the study demonstrated that “beliefs about the likelihood of success matter most in determining the public’s willingness to tolerate US. military deaths in combat.”<sup>419</sup> While public support for war and tolerance for casualties also vary in several other ways, in the end, the study showed that the most determinant factors came from a combination of right cause and probability of success.

Cast in the quantitative language of political science, “Success Matters” ties war-waging proficiency to legitimacy. The beliefs of rightness of a war, whether a war is justified, is a consideration of *jus ad bellum*. The probability of wartime success, however, is at the heart of the strategic dimension of *jus in bello*—prudence in waging war. The probability of success increases when a properly conducted performance-

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<sup>417</sup> Peter Feaver, Jason Reifler and Christopher Gelpi, “Success Matters,” *op.cit.*

<sup>418</sup> Peter Feaver, Jason Reifler and Christopher Gelpi, “Success Matters,” *ibid.*, p. 20.

<sup>419</sup> Peter Feaver, Jason Reifler and Christopher Gelpi, “Success Matters,” *ibid.*, p. 8.

oriented, dialogue-and-execution regime is used. “Success Matters” demonstrates that the citizens of a country at war, and perhaps especially the citizens-who-become-soldiers and their families, will support a war that is progressing toward an ultimately successful outcome that matters.<sup>420</sup> Purpose, progress, and ultimate success give meaning to the sacrifices inherent in war—thus giving legitimacy to the war. Said another way, citizens consider illegitimate a war that appears to waste the lives of citizens-who-become soldiers by placing them in situations of significant risk, but for no worthy cause and with little chance of success. Thus, “Success Matters” ties the legitimacy of a war to its probability of success, which in turn, is a function of the first two elements of the tri-partite tension inherent in waging war: getting the aims, strategies, policies, and military campaigns “right enough,” or at least less wrong than those one is fighting, and then executing and adapting.

The tri-partite tension inherent in the war-waging dimension of *jus in bello*—set war aims and make strategy policy, and military campaign decisions that increase the probability of being right, or at least less wrong than those one is fighting; translate those decisions into action to achieve war aims at the least cost, in lives and resources, and least risk to one’s political community then adapt aims, strategies, and policies to the changing realities of war as they unfold; and do all of the foregoing while observing the war convention, sustaining the war’s legitimacy in the eyes of the political community, and maintaining proper subordination of the military to civilian leadership—is a dynamic relationship. War’s essential uncertainty and constant change causes the dynamism inherent in the tri-partite tension, and a properly conducted a performance-oriented,

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<sup>420</sup> Peter Feaver, Jason Reifler and Christopher Gelpi, “Success Matters,” *ibid.*, pp. 11-16, 24-26, and 44-45.

dialogue-and-execution regime helps keep the elements of this tension in sufficient balance.

A properly conducted performance-oriented, dialogue-and-execution regime is far from the example of role differentiation that Walzer uses to separate political leaders who are responsible for the “war itself” and military leaders who are responsible for “the conduct of war.” Actual war, waged by democracies at least, require that senior political leaders retain final decision responsibility. *En route* to that final decision as well as in execution and adaptation, however, the responsibilities of senior political and military leaders are more integrated and shared than Walzer admits.

Clarifying and describing those responsibilities and including them where they belong, as part of *jus in bello*, is important because a just war theory that cannot account for this aspect of war is incomplete. It is also important because unlike the four case studies used in *Supreme Command*, nations are not always fortunate to have wise senior political and military leaders. In the analysis of the Vietnam War period, *War and Politics* reminds us that “a wiser President would have ignored [poor military] advice; more strategically minded generals would have given better advice.”<sup>421</sup> A nation cannot, unfortunately, count on wise presidents and strategic minded generals both being present at the appropriate time. Human failings, even stupidity at high places, and bumbling bureaucracies are at least as common as wisdom, genius and managerial excellence. Cohen, realizing this, thus named his penultimate chapter “Leadership Without Genius,” and commended the unequal dialogue as substitute for the absence of genius. Such a realization is exactly right, but the substitute was insufficient. Nations that acknowledge

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<sup>421</sup> Bernard Brodie, *War and Politics*, *op.cit.*, p. 440.

the absence of genius, that understand the low probability of wise presidents and strategic generals emerging at just the right time, and that recognize the existence of human and organizational failings require a properly conducted performance-oriented, dialogue-and-execution regime that mitigates these realities, not just a singular unequal dialogue.

### **Conclusions: Looking for guiding principles.**

In “Building Trust,” Richard Kohn describes two war-time secretaries of defense whose behavior in office resulted in poorly decided war aims, strategies, policies, and military operations, and equally poor execution and adaptation.<sup>422</sup> Secretaries McNamara and Rumsfeld, he says, were both people of “enormous drive, energy, and ambition: competitive...domineering, arrogant, dismissive, manipulative, hard-working, bullying, contemptuous, intimidating, ruthless, humiliating, and aggressive.”<sup>423</sup> Both created dysfunctional relationships between the topmost civilians and the most senior military officers, relationships that resulted in the “lack of candor, consultation, coordination, and collaboration” which “can be disastrous for policy and decision making, in peacetime and in war.”<sup>424</sup> Kohn goes on to state that such dysfunctional relationships are directly related to performance in war because they can cause “the United States to undertake unnecessary wars, prosecute them unwisely, and pile up hundreds or thousands of dead

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<sup>422</sup> Richard H. Kohn, “Building Trust,” *op.cit.*, pp. 267-269. Kohn refers to Secretaries Robert S. McNamara of the Vietnam War period and Donald Rumsfeld of the post 9/11 wars.

<sup>423</sup> Richard H. Kohn, “Building Trust,” *ibid.*, p. 268.

<sup>424</sup> Richard H. Kohn, “Building Trust,” *ibid.*, p. 269.

and wounded Americans, not to speak of many times that number of enemies and innocent civilians.”<sup>425</sup>

In peacetime, such leadership would be unfortunate; in wartime, it is morally reprehensible, for the lives of citizens-who-become-soldiers and of the innocent are among the costs of executing the “disastrous policy” that emanates from dysfunctional relationships, dialogues, and execution. Though senior political and military leaders act far from the battlefield, Kohn reminds us, the quality of their work selecting war aims, strategies, then identifying, executing, and adapting policies and military campaigns to achieve those aims—i.e. their war-waging responsibilities—are linked directly to justice in the conduct of war.

Accounting for *jus in bello* war-waging responsibilities and the principles that guide, or should guide, war-waging behavior, therefore, is fundamental to a complete just war theory. Such an account will help address one of the important purposes of Walzer’s *Just and Unjust Wars*, to produce a book of “practical morality.”<sup>426</sup> *Just and Unjust Wars*, among other things, intends to provide a structure—a language and a logic—that can be useful in understanding the moral dimension of war and in arguing about what is just and unjust in war. Incorporating the war-waging dimension of *jus in bello* will also help with another of Walzer’s main purposes, providing “a comprehensive view of war as a human activity.”<sup>427</sup> He intends *Just and Unjust Wars* to provide “help to men and women faced with hard choices,”<sup>428</sup> where the “tensions are summed up in the dilemma of winning and

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<sup>425</sup> Richard H. Kohn, “Building Trust,” *ibid.*, p. 269.

<sup>426</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, p. xv.

<sup>427</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. xiii.

<sup>428</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. xv.

fighting well...the military form of the means/ends problem, the central issue in political ethics.”<sup>429</sup>

In leaving out *jus in bello*’s war-waging principles and responsibilities, however, Walzer leaves a gaping hole in what was to be a “comprehensive view of war as a human activity.” The conduct of war, as this study shows, involves more than fighting. Conducting a war includes both war-fighting and war-waging activities. The latter take place far from the battlefield, but are no less important or essentially connected to the conduct of a war. Neither Walzer’s, Feaver’s, nor Cohen’s accounts have provided a fully satisfactory account of *jus in bello*’s war-waging dimension, but a properly run performance-oriented, decision-and-execution regime fills the gap in Walzer’s account.

Incorporating the war-waging dimension of *jus in bello*, to include the principles and theory of responsibility associated with it, provides a more complete framework useful in arguing about and explaining justified conduct in war. Chapter 6 takes this final step. Drawing from the cases and discussion of the previous chapters, the next chapter suggests five principles—the principles of continuous dialogue, final decision authority, managerial competency, war legitimacy, and resignation—as those which should govern war-waging behavior. Chapter 6 also discusses the sources and purposes of the principles it suggests.

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<sup>429</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, pp. xvi-xvii.



Chapter Six:  
The War-waging Principles of *Jus in Bello*

The final chapter completes the discussion of waging war, the strategic dimension of *jus in bello* that Walzer omits. The chapter presents five principles—the principles of continuous dialogue, final decision authority, managerial competency, legitimacy, and resignation—as those that govern *jus in bello*'s war-waging activities. The chapter also presents the sources and purposes of the five war-waging principles. Finally, the chapter describes the war-waging responsibilities of senior political and military leaders *jus in bello* as positional responsibilities and identifies a rationale for the moral grounding of these responsibilities.

Ultimately, the five war-waging principles, like the *jus in bello* war-fighting principles of Walzer's war convention, are designed to balance protection of individual and communal life with the legitimate conduct of war. At the tactical level, this balance occurs between winning and fighting well. At the strategic level, the balance occurs amid the tri-partite tension inherent in the war-waging dimension of *jus in bello*: (1) set war aims and make strategy, policy, and military campaign decisions that increase the probability of being right, or at least less wrong than those one is fighting; (2) translate those decisions into action to achieve war aims at the least cost, in lives and resources, and least risk to one's political community then adapt aims, strategies, policies, and military operations to the changing realities of war as they unfold. Finally, (3) do the foregoing while observing the war convention, sustaining the legitimacy of the war in the

eyes of one's political community, and maintaining proper subordination of the military to civilian leadership.

The *jus in bello*'s war-waging principles also leave senior political and military leaders in a position akin to soldiers and military leaders on the battlefield: "The cruelest decisions [are left] to be made by the men [and women] on the spot."<sup>430</sup> The principles of *jus in bello*'s tactical dimension describe right conduct in the midst of battle; applying them correctly helps assure justice is done in fighting a war. The principles of *jus in bello*'s strategic dimension describe right conduct in the waging of war; applying them correctly helps assure justice is done in waging a war.

### **War-waging principles.**

The principles presented below emerge from the analysis and examples of the previous chapters. Together, they form a framework that, if followed, increase the probability that war-waging decisions and actions will use the lives of citizens-who-become soldiers well and decrease the likelihood that the lives of the innocent and the life of the political community are risked unnecessarily. The principles describe what senior political and military leaders owe the citizens-who-become-soldiers that they lead, the political community that they serve, and the innocent whose lives they risk. Said another way, senior political and military leaders who follow the principles described below are acting justly with respect to *jus in bello*'s strategic, war-waging dimension, for the principles describe right conduct in the waging of war.

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<sup>430</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 152.

1. The Principle of Continuous Dialogue. This principle recognizes the necessity for a robust civil-military dialogue prior to the initial decisions concerning war aims, strategies, policies, and military campaigns. The principle also recognizes the need for continuing a dialogue throughout the conduct of war in order to adapt initial aims, strategies, policies, and campaigns to the dynamic nature of war. Because of the continuous nature of this dialogue, one that is linked to both making and executing war-waging decisions and actions, it must be approached as a decision-and-execution regime, not as a discrete event. The President and Secretary of Defense are primarily responsible for setting the right conditions for this dialogue to take place, but the senior political and military leaders who participate in this regime are co-responsible for its conduct.

The *jus ad bellum* aspect of just war theory properly links war aims to the justification of the war itself. For example, the aims of a war justified on grounds of self defense cannot go beyond defeat of the aggressor and reasonable punishment of the aggressor. The principles of *jus ad bellum* also limit war aims, strategies, policies, and military operations to the purposes of any specific war or intervention, thus preventing a war from turning into an expansive crusade. There are *jus in bello* limits as well.

Neither war aims that cannot actually be achieved nor strategies, policies, and campaigns that cannot actually be executed—or do not actually contribute to achieving the aims—set can be “best.” “Best” in some ideal sense doesn’t matter. Best in the practical sense—using aims, strategies, policies, and military operations that have a reasonable probability of success relative to one’s enemies—does matter. “Best” in this practical sense emerges from a proper civil-military dialogue. Aims, strategies, policies,

and campaigns decided without sufficient discussion about what actually is required to execute them and without a sufficient discussion about whether these requirements are available, affordable, and acceptable may commit a nation to the impossible, resulting in prolonged war, wasted lives and resources, and end in failure.

A robust, continuous dialogue, a decision-and-execution regime, is necessary not only before a war but also during it. The reality is that war is so complex, unpredictable, and fast-changing—especially in an era of a 24/7 global media and social media—that decisions and actions have a limited “shelf life” of utility. The first Gulf War of 1990 provides a clear example of the requirement for robust, continuous dialogue before and during war.

Iraq invaded Kuwait on August 2, 1990. Five days later, the first U.S. troops arrived in Saudi Arabia to defend it from the possibility of Iraqi attack. On November 29, 1990, the United Nations issued a resolution setting a deadline for Iraq to withdraw its forces from Kuwait or face military action. The U.S. Congress authorized force on January 12, 1991. The air campaign against Iraqi forces began on January 17<sup>th</sup> and the ground campaign on February 24, 1991. The United Nations accepted the terms of a cease fire agreement on March 3<sup>rd</sup>, and the first U.S. troops began arriving home in March 17, 1991.<sup>431</sup>

The U.S. civil-military dialogue began on August 1, 1990 when President George H.W. Bush was notified of Iraq’s pending invasion of Kuwait. War aims, strategies, policies, and military operations emerged iteratively from this dialogue even as the first American troops deployed to Saudi Arabia. The discussions and debates among senior

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<sup>431</sup> Two quick references for the timelines associated with the 1990-91 Gulf War are: [http://en.wikipedia.org/wiki/Timeline\\_of\\_the\\_Gulf\\_War](http://en.wikipedia.org/wiki/Timeline_of_the_Gulf_War) and <http://www.cnn.com/2013/09/15/world/meast/gulf-war-fast-facts/>.

political and military leaders, between the administration and Congress, with regional partners and allies, and in the press were fast and furious. First to emerge was a set of principles used to guide final decisions as to war aims, strategies, policies, and military operations.<sup>432</sup> That the U.S. would not let Iraq's aggression stand was a relatively straightforward decision. But what exactly to do, with whom, how, and when, were all matters of extensive and inclusive discussion—within the United States, with international organizations, and among allies and coalition partners. From this dialogue came war aims—those acceptable not only to the U.S. but also the U.N., allies, and coalition partners.<sup>433</sup> Several strategies emerged: diplomatic, political, and military. Throughout, there was a constant set of conversations, briefs, debates, consultations, and “rolling” decisions. The key U.S. participants included the President, the National Security Advisor, the Secretaries of Defense and State, the Chairman of the Joint Chiefs of Staff, the Director of Central Intelligence, and the commander of U.S. Central Command. Others were brought in as needed.<sup>434</sup> This dialogue continued right up to the final decision as to when and how to end the war.<sup>435</sup> The war was short, but this was unexpected. At the start, “the pundits were hard at work forecasting the darkest scenarios....citing numbers of 20,000 [casualties] or more...military estimates were below 2,000.”<sup>436</sup>

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<sup>432</sup> George Bush and Brent Scowcroft, *A World Transformed*, *op.cit.*, p. 341.

<sup>433</sup> George Bush and Brent Scowcroft, *A World Transformed*, *ibid.*, pp. 383, 399, and 484.

<sup>434</sup> Michael Gordon and General Bernard E. Trainor, *The General's War: The Inside Story of the Conflict in the Gulf* (New York: Little, Brown and Company, 1995), pp. 37-101, 123-202, and 372-438; George Bush and Brent Scowcroft, *A World Transformed*, *ibid.*, pp.302-492; Dick Cheney, *In My Time: A Personal and Political Memoir* (New York: Threshold Editions, 2001), pp. 181-239; and Colin Powell, *My American Journey* (New York: Random House Large Print, 1995), pp. 696-817.

<sup>435</sup> Michael Gordon, *The Generals War*, *ibid.*, pp. 414-415.

<sup>436</sup> George Bush and Brent Scowcroft, *A World Transformed*, *op.cit.*, p. 425.

The civil-military dialogue associated with the 1990-91 Gulf War was not a discrete event. It was continuous. Nor was the dialogue characterized by senior military leaders episodically providing “military advice” as “input” to senior political leaders to use in separate discussions. Rather, the dialogue is best understood as a regime, a structured set of dialogues over time in which senior military leaders—primarily the Chairman of the Joint Chiefs and the Commander of U.S. Central Command—were an essential part, not merely episodic attendees who provided “input.” Once the war began, few major adjustments were needed because the war ended more quickly than anticipated, but the speed of the war did require adaptations—even in this short, seemingly straight-forward war differences of opinion arose.

One of the first concerned how long to wait before launching the air and ground offensive operations to expel Iraqi forces from Kuwait. Others concerned how long to allow sanctions to work, how long the coalition could hold together, how to assess potential risks and put in place mitigation measures, how to develop and sustain support in Congress and with the American people—all were argued by the senior political and military leaders.<sup>437</sup> They also argued about the military strategy: could air power alone attain the war aims, how should an air and ground campaign be structured, when should each start, what to do if Saddam began withdrawing his forces before the offensive operation began, and how to keep the war from spreading throughout the region.<sup>438</sup> They also debated when and how to end the war—how much of the Iraqi Army should be

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<sup>437</sup> George Bush and Brent Scowcroft, *A World Transformed*, *ibid.*, pp. 353, 358, 390-91, 393, 397, 401, 417, 428 and 446.

<sup>438</sup> George Bush and Brent Scowcroft, *A World Transformed*, *ibid.*, pp. 328, 353, 380-81, 383, 395, 432, 461-61, 468, 473, and 477.

destroyed, and whether the offensive should transition to unseat Saddam.<sup>439</sup> At times, senior political leaders challenged military perspectives; at other times, the tables turned. The point is that both sets of leaders were responsible for the quality and content of the dialogue. Both were responsible to ensure the President's decisions were best, "all things considered," and both were responsible to ensure that the decisions made could actually be executed and had a reasonable chance to achieve the aims set.

Exercising war-waging responsibilities involves leaders who can adapt to the dynamism of war, and the longer the war lasts the more such leadership is required. Adaptive leadership differs from authority, and the difference matters. Authority in a role—whether corporate CEO, military general, or Secretary of Defense—has a specific scope that defines the expectations of what those who granted the authority.<sup>440</sup>

Tactical, war-fighting, problems generally have solutions that can be implemented using current knowhow, and have persons in authority that can apply that knowhow. If the lieutenant doesn't know how to solve a problem, for example, one of his sergeants or his captain is likely to have faced a similar enough problem many times. The lieutenant can count on that knowhow and authority. If not, the lieutenant colonel or sergeant major, or other seniors in the organization in which the lieutenant serves, almost certainly will have an answer. Generals and senior colonels who circulate the battlefield during combat often have discussions with subordinate leaders over a particular tactical problem with which his or her subordinate is having difficulty. Such is the nature of tactical problems and battlefield leadership.

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<sup>439</sup> George Bush and Brent Scowcroft, *A World Transformed*, *ibid.*, pp. 482 and 484-87.

<sup>440</sup> Ronal Heifetz, Alexander Grashow, and Marty Linsky, *The Practice of Adaptive Leadership* (Boston, Massachusetts: Harvard Business Press, 2009), p. 24.

In organizational theory parlance, these are called technical problems.<sup>441</sup> Authority is important in solving technical problems. Technical problems “may be very complex and critically important,...[but] they have known solutions that can be implemented by current know-how. They can be resolved through the application of authoritative expertise and through the organization’s current structures, procedures, and ways of doing things.”<sup>442</sup> Examples of the many kinds of technical problems that arise on the battlefield are conducting an attack or a defense, laying in an ambush, executing a security or reconnaissance plan, or executing a resupply or casualty recovery operation. Any one of these could be complex and important, but all can be resolved through existing capacities, and, appropriately, their solution can be directed by a person in authority.

At the strategic, war-waging level, the problems are different, and authority plays a different role. War-waging problems are generally a mix of technical and adaptive problems. Adaptive problems cannot be solved through technical means. Adaptive problems commonly require that a team of experts come together to understand the problem at hand and help identify potential ways to deal with the problem. Adaptive problems usually require that work is done outside the norm of the organization’s routine.<sup>443</sup> “Making progress requires going beyond any authoritative expertise...and generating new capacity [within the organization].”<sup>444</sup> Many strategic level problems contain a significant adaptive element because the problem itself is not clear-cut, often so

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<sup>441</sup> One of the best definitions and descriptions of the difference between technical and adaptive problems can be found in Ronald A. Heifetz, *Leadership Without Easy Answers* (Cambridge, Massachusetts: The Belknap Press of Harvard University, 1994), pp. 74-76; and Ronald Heifetz, et.al., *The Practice of Adaptive Leadership*, *op.cit.*, pp.19-28.

<sup>442</sup> Ronald Heifetz, et.al., *The Practice of Adaptive Leadership*, *ibid.*, p. 19.

<sup>443</sup> Ronald A. Heifetz, *Leadership Without Easy Answers*, *op.cit.*, pp. 69-150 and 183-206.

<sup>444</sup> Ronald Heifetz, et.al., *The Practice of Adaptive Leadership*, *ibid.*, p. 19.



complex no one person can understand it completely, and because both problem identification and the solution require learning-on-the-go.<sup>445</sup>

Understanding an adaptive problem, or the adaptive component of a mixed problem, emerges from the context, so does implementing the “solution.” Since the context of an adaptive problem is continually changing, the “solution” changes continually as well. Examples of mixed technical and adaptive wartime problems are these: defeat the Confederate States in such a way so as to preserve the Union; conduct a global war against the Axis Powers and establish a more stable peace following their defeat; disrupt, dismantle, and defeat Al Qaeda and their affiliates. Each of these problems has sub-components which can be solved through existing organizations, processes, and structures. Each, however, has significant elements for which no authoritative expertise exists and which cannot be fully understood, let alone solved, at the start. Seeking technical solutions, using normal procedures and relying on authority are simply inappropriate when facing adaptive problems. Understanding the problem requires “getting into it,” for the nature of the problem itself is dynamic, as is the solution.

In fact, at the strategic level, often there are no actual solutions. Rather, there are resolutions that work for a time, but because strategic problems generally unfold and change over time, the resolution must be continually revisited. As Ambassador Crocker once said about the problems that the senior leadership team faced in Baghdad in 2007-2008, “all we can do is manage problems; we can’t solve them.”<sup>446</sup> Such is the nature of strategic level problems. Senior political and military leaders find themselves learning

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<sup>445</sup> Ronald A. Heifetz, *Leadership Without Easy Answers*, *ibid.*, p. 75.

<sup>446</sup> Conversation with the author.

their way to understanding and resolving the problems they face; that's why they need each other, and they need the continuous dialogue-and-execution regime.

Adaptive problems like those that senior political and military leaders face in waging war are problems where no one authority is capable of identifying a resolution let alone implementing it. There is no "authoritative expertise." Leadership, in cases like these, shifts away from answer-giving authority, like that associated with technical problems. Rather, leaders facing adaptive problems must work to construct a relationship or sets of relationships; create forums in which to raise and process tough questions, hear divergent opinions; and argue about possible solutions. Success in resolving adaptive problems involves implementing some possible solutions as if they were experiments, then learning from and adapting to what actually works. In sum, leaders facing adaptive problems must use relationships and collaborative forums like that of a dialogue-and-execution regime as tools needed to understand a problem and work toward a solution, rather than finding someone in authority to direct an answer.<sup>447</sup> "Dependency on authority appropriate to technical solutions," Heifetz says in *Leadership Without Easy Answers*, "becomes inappropriate in adaptive ones."<sup>448</sup> This is why, when facing adaptive, war-waging problems, senior political or military leaders who simply direct what they want done and how they want it done increase the probability of being wrong. They are applying technical solutions to adaptive problems, applying an approach that may work at the tactical level but not at the strategic. In fact, "the most common cause of failure in

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<sup>447</sup> Ronald A. Heifetz, *Leadership Without Easy Answers*, *op.cit.*, pp. 84-88.

<sup>448</sup> Ronald A. Heifetz, *Leadership Without Easy Answers*, *ibid.*, p. 75.

leadership is produced by treating adaptive problems as if they were technical problems.”<sup>449</sup>

Adaptive leadership, the kind of leadership that waging war requires, therefore, is not about meeting or exceeding your authorizers’ expectations, which is what compliance regimes demand. Rather, adaptive leadership is about challenging some of those expectations as the unexpected occurs.<sup>450</sup> By practicing adaptive leadership, those involved in the decision-and-action regime must tell each other what all need to hear regarding resolving the problems they face.<sup>451</sup> Only this kind of leadership can help senior political and military leaders make progress on the difficult war-waging issues they face together.

Unlike technical problems, there is no clear and time-proven framework or checklist that will result in a solution. Those responsible for waging war need a plan, but they also need freedom to deviate from that plan as new events, situations, opportunities, and vulnerabilities arise. Continual evaluation and deviation is the hallmark of adaptive problems; it is also the hallmark of a proper performance-oriented, decision-and-execution regime. When conditions change, as they do constantly in war, senior political and military leaders are rarely able to control the outcome completely. Rather, the reality of war is that several possible outcomes are equally likely. Solutions to adaptive problems do not form a straight line. As the authors of *The Practice of Adaptive Leadership* say, adaptive leadership “requires flexibility and openness even in defining

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<sup>449</sup> Ronal Heifetz, Alexander Grashow, and Marty Linsky, *The Practice of Adaptive Leadership*, op.cit., p. 19.

<sup>450</sup> Ronal Heifetz et.al., *The Practice of Adaptive Leadership*, *ibid.*, p. 26.

<sup>451</sup> Ronal Heifetz et.al., *The Practice of Adaptive Leadership*, *ibid.*, p. 27.

success.”<sup>452</sup> Waging war, one form of adaptive work to be sure, requires both senior political and military leaders to work together in a cooperative “leadership space,” which includes but is separate from each participant’s individual, role-defined scope of authority.

The President and Secretary of Defense have the primary responsibility for setting the climate required for adaptive leadership and the dialogue-and-execution regime necessary to practice it. This is the proper role of authority with respect to adaptive problems; authority convenes the experts and sets the climate necessary in which the dialogue-and-execution regime takes place. President Obama, acknowledging this responsibility at a particularly difficult and frustrating time in the dialogue over changing U.S. strategy in Afghanistan, said to Secretary Gates, “I’ve tried to set an environment where all points of view can be expressed and have a robust debate. I’m prepared to devote any amount of time to it....What is wrong?”<sup>453</sup> Secretary Gates also recognized that it was his responsibility to “set an...atmosphere so people would be more inclined to speak up.”<sup>454</sup> Only the President and the Secretary of Defense have the authority necessary to convene the experts and establish the climate and the regime necessary for a war-waging dialogue. All have the responsibility to participate as adaptive leaders in the dialogue-and-execution regime necessary to wage war. Any one of the participants may take leadership roles at one time or another, but none other than the President and Secretary of Defense have the authority to convene, focus, and guide the set of leaders necessary to make war-waging decisions and take war-waging actions.

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<sup>452</sup> Ronal Heifetz et.al., *The Practice of Adaptive Leadership*, *ibid.*, p. 31.

<sup>453</sup> Robert Gates, *Duty*, *op.cit.*, p. 369.

<sup>454</sup> Robert Gates, *Duty*, *ibid.*, p.120.

No president wants to be wrong when it comes to committing the nation to war. Too much is at stake. Nor does a president want to be wrong when it comes to waging a war once committed. Again, the stakes are too high. In fact President George W. Bush said, “Sending Americans to war is the most profound decision a president can make.”<sup>455</sup> In war, however, only the President and the Secretary of Defense have the positional authority to gather the necessary participants in a proper war-waging dialogue-and-execution regime and to focus those participants on the adaptive problem they face together and the regime that keeps them from being “too wrong.” The President and the Secretary of Defense have the responsibility, therefore, to ensure the set of senior political and military leaders focus on the right problems and make progress toward their resolution; have the information and analysis necessary when they need it; have the right forums and frequency to discuss, debate, and attain sufficient unity with respect to their decisions; execute those decision coherently; and adapt given what realities emerge. When this regime goes astray—as all such regimes inevitably will because of complexity, pressure, and personality—the President and Secretary of Defense have the responsibility to put things back on track, to refocus the discussion, or to manage the participants. That is, they have the responsibility for the integrity, efficiency, and effectiveness of the process, in addition to the outcomes of that process.

The other senior political and military leaders also have responsibilities in this process. They are co-responsible for the quality of the dialogue and the resultant initial decisions, just as they are for the on-going dialogue-and-execution regime needed during a war. Neither senior political nor military leaders have access to an “answer book.” All are

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<sup>455</sup> George W. Bush, *Decision Points*, *op.cit.*, p. 184.

imperfect judges of which strategies and policies are likely to work. Rare will be the case where either senior political or military officers would have “waged war before,” although some may have fought in wars. All are imperfect predictors, therefore, of the consequences of decisions and action—at home, abroad, or on the battlefield. None can foresee enemy reactions or decisions. Whatever limited guarantee that may be found in waging war emerges from executing a proper dialogue-and-execution regime. That is, the limited guarantee comes from a regime that attempts to maximize both the political and military expertise—both of which are necessary in waging war and neither of which are sufficient. This is simply the nature of waging war.

Feaver correctly pointed out that if the senior civilian leader exercises his final decision authority wrongly, the “voters-as-principal is obliged to punish the politician-as-agent by voting him or her out of office.”<sup>456</sup> The “vote-‘em-out” approach is one way to remove inept or ineffective leadership, but waiting until this point certainly seems to be an extreme that should be avoided in the first place. A properly executed dialogue-and-execution regime helps avoid this extreme. Further, citizens expect senior political and military leaders to do what they can before the extreme obtains. This is part of the responsibilities of their offices. The final decision authorities are held responsible by the citizens as Feaver describes, but senior political and military leaders are also both responsible to the final decision authority and to the people as well. Their responsibility demands that they do what they can to avoid the extreme of deciding wrongly, when such a decision can be avoided, and modify initial decisions quickly once they have been proven wrong or ineffective.

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<sup>456</sup> Peter Feaver, *Armed Servants*, *op.cit.*, p. 65.

A dialogue-and-execution regime that augmented each participant's limited experiences and perspectives, one that strove to find "solutions" with the highest probability of success, and one that acknowledged subordination but also encouraged open participation, is the kind of regime that governed war-waging decisions made by President Roosevelt and his senior civilian and military leaders during World War II. The structure and style of this dialogue, as well as the participants in it, permitted just the kind of discussion and debates that are necessary to achieve the "limited guarantee." This is exactly the opposite of the type of regime used by the Johnson administration during the Vietnam War—an example of an avoidable travesty in the exercise of war-waging responsibilities. Here the structure and style of the dialogue—if it can be called a dialogue at all—as well as the duplicitous behavior of at least some of the participants, resulted in using lives in a war that could not be won in the way it was being waged and putting the innocent at risk unnecessarily.

The issue concerning war-waging responsibilities is not whether President Johnson had the authority to make the decisions he made. He did. Rather, the issue is how he and his senior political and military leaders exercised adaptive leadership inherent in their war-waging responsibility. So the question becomes, which of the participants in this dialogue were morally blameless and which morally blameworthy? Understanding the kind of dialogue-and-execution regime that is required to exercise war-waging responsibilities, provides a framework to help answer this question.

To get the rough, give and take argument over analysis, alternatives, risks, and consequences required by the dialogue-and-execution regime, much of it must be conducted in protected space. Leaks harm the process, for they often foreclose options

before foreclosure is necessary, harden positions too quickly, and add stress among participants in the dialogue-and-execution regime whose common leadership challenge is already stressful enough. At best, leaks—even though they are the stuff of any capital city—detract from proper dialogue and execution. At worst, they prevent it all together. Similar results occur when participants in the dialogue take the discussion to the public prematurely, before the group has time to complete their work.

One prime example where a combination of leaks and public discussion nearly derailed a proper dialogue and made execution more difficult occurred during the complex set of discussions on Afghanistan in 2009.<sup>457</sup> The *Washington Post* article published an interview with General Petraeus in which he dismissed an option still being discussed among the principals.<sup>458</sup> A couple of weeks later another *Washington Post* article was based upon a leaked copy of General McChrystal's initial commander's assessment of the situation in Afghanistan.<sup>459</sup> The article ended by quoting the assessment: "Failure to provide adequate resources...risks a larger conflict, greater casualties, higher overall costs, and...critical loss of political support. Any of these risks, in turn, are likely to result in mission failure."<sup>460</sup> This article was followed by a TV interview (taped months before, but aired in sequence with the *Post's* articles). In the interview, GEN McChrystal discussed elements of his assessment and its conclusions. McChrystal also gave a speech in London where, in the question and answer period, the general dismissed out of hand the option that the Vice President was supporting and that was still being

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<sup>457</sup> Robert M. Gates, *Duty, op.cit.*, pp. 366-385.

<sup>458</sup> Robert M. Gates, *Duty, ibid.*, p. 367.

<sup>459</sup> Robert M. Gates, *Duty, ibid.*, p. 368.

<sup>460</sup> Robert M. Gates, *Duty, ibid.*, p. 368.



debated.<sup>461</sup> Secretary Gates was sure that none of this was an intentional attempt to derail the on-going discussion,<sup>462</sup> but understood that the net result was not good. “A wall was going up between the military and the White House,” according to Secretary Gates. This kind of wall, at the very least, wasn’t helpful in making war-waging decisions, and was in Secretary Gates’ view, “bad for the country, even dangerous.”<sup>463</sup>

Although Secretary Gates believed these interviews and speeches were not purposefully orchestrated to limit the options under consideration, he recognized his responsibility for the integrity and efficacy of the dialogue and admonished his military subordinates. He reminded both generals about the necessity to provide their best analysis and judgment in the on-going dialogue and to provide it “candidly but privately.” Even as he did so, however, civilian members of the dialogue were, in Gates’ words, “spilling their guts regularly—and disparagingly—to reporters about senior military leaders...and the decision making process.”<sup>464</sup> Whether these senior political leaders were also admonished is unknown, but they should have been. These and other instances created, at least for a time, a poisonous, suspicious, and sometimes condescending atmosphere that, again at the very least, is not conducive to making good war-waging decisions and is completely avoidable. Simply put, those civilian or military subordinates who obstruct a high quality dialogue, who do not press for the best decision, who participate with less than full candor, or who execute half-heartedly or not at all are not doing their duty.

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<sup>461</sup> Robert M. Gates, *Duty, ibid.*, p. 368.

<sup>462</sup> Robert M. Gates, *Duty, ibid.*, p. 369.

<sup>463</sup> Robert M. Gates, *Duty, ibid.*, p. 369.

<sup>464</sup> Robert M. Gates, *Duty, ibid.*, p. 370.

To work properly, the President and the Secretary of Defense are overall responsible for establishing the conditions for and the conduct of the dialogue, but both the civilian and military leaders who participate in this dialogue are co-responsible to maintaining the dialogue's protected space and for the substantive quality of the dialogue itself.

"Dysfunctional relationships," Richard Kohn says, "between the topmost civilians and the most senior military officers—particularly lack of candor, consultation, coordination, and collaboration—can be disastrous for policy and decision making.... Poor communications can cause the United States to undertake unnecessary wars, prosecute them unwisely, and pile up hundreds or thousands of dead and wounded Americans, not to speak of many times that number of enemies and innocent civilians."<sup>465</sup> Speaking of the 2009 dialogue on Afghanistan, Secretary Gates says simply, "On reflection, I believe all of us at the senior-most level did not serve the president well in this process."<sup>466</sup> This reflection is a multi-faceted illustration. In it, the President is seen as responsible for making the final decision. The President is also seen as one who is served by a dialogue-and-execution regime in which a set of senior political and military leaders are co-responsible for its conduct and outcome.

2. The Principle of Final Decision Authority. This principle recognizes the essentiality of civil control of the military in democracies. At the same time, the principle recognizes that proper subordination and responsible exercise of final decision authority both require the specific kind of continuous civil-military dialogue-and-execution regime described in the first principle.

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<sup>465</sup> Richard H. Kohn, "Building Trust: Civil-Military Behaviors for Effective National Security," *op.cit.*, p. 269.

<sup>466</sup> Robert M. Gates, *Duty*, *op.cit.*, p. 384.

The final decision authority of the president and his senior civilian leaders extends not only to *jus ad bellum* matters—issues associate with the decision to go to war, but also to war-waging *jus in bello* matters. War aims, strategies, and policies, as well as decisions about major operations and campaigns are not purely military matters; they are political-military matters where the senior political leaders have final decision authority.

Exercising this authority, however, is not arbitrary. Like all political power in a democracy, the power to make final decisions is limited. The U.S. Constitution limits this authority, legally and institutionally, by splitting war waging responsibility between the executive and legislative branches. There are moral limits as well.

Exercising this war-waging final decision authority irresponsibly—in ways that lower the probability that decisions and actions will be effective; unnecessarily prolong a war, thereby wasting the lives of citizens-who-become-soldiers and the resources of the political community; or increasing risk to the political community or the lives of the innocent—is morally blameworthy, even if not illegal. These factors, therefore, help define “responsible use” of a political leader’s final decision authority.

Responsible exercise of final decision authority requires the kind of dialogue-and-execution regime described in the previous principle and preceding chapters. Such a regime increases the likelihood of identifying war aim, strategies, policies, and campaigns with the highest probability of success. Such a regime also increases the likelihood of adapting correctly as a war unfolds. Senior civil and military subordinates are properly subordinate when they ensure a high quality dialogue precedes the exercise of “final decision authority.” Those who have the “final decision authority” must demand that the dialogue leading to their decision is as complete, honest, and reality-

based as possible. Disagreement in the war-waging dialogue is not a sign of disrespect or disloyalty.

Civilian control of the military is completely consistent with the often rough and tumble dialogue-and-execution regime that waging war requires. Civilian control is also consistent with senior civil or military subordinates who, after a decision is made and executed, reengage in the dialogue if the results of that decision and action are found to be counter to what was intended. Civil or military subordinates who obstruct the dialogue, however, or who do not participate in it fully, or do not carry out decisions completely and faithfully, are disloyal not only to the final decision authority but also to the political community, to the citizens-now-soldiers who end up executing the faulty decisions that emanate from an improperly conducted dialogue-and-execution regime, and to the innocent whose lives are put at risk unnecessarily.

3. The Principle of Managerial Competency. This principle recognizes the necessity to use, by-pass, or change if necessary, civil and military bureaucracies to ensure governmental structures and processes work to achieve war aims, to execute strategies and policies, and to support military operations. The principle also recognizes that the senior political and military leaders' are responsible for "managerial competency" within their scope of authority, and that executing this responsibility requires on-going, civil-military dialogue-and-execution regime.

Once a final decision is made, senior military and political leaders must make their respective bureaucracies work to support that decision. Making a bureaucracy work, especially making it work doing what it does not want to do—that is, anything new or

fast—is especially hard. In war, however, this is exactly the task. Senior political and military leaders are not only co-responsible for a proper dialogue, but they are co-responsible for executing strategies, policies, and military operations. In execution, senior leaders have limited options: they execute using existing bureaucracies and their in-place processes, they put in place *ad hoc* organizations and processes designed to by-pass exiting bureaucracies, or they create new organizations and systems needed to respond to previously unrecognized requirements.

A senior leader who cannot use his or her bureaucracy “well enough” is simply not living up to his or her war-waging responsibilities. Senior political and military leaders who can hold soldiers and leaders in combat responsible for proper tactical execution under high-risk conditions, but do not hold themselves accountable to execute their war-waging managerial responsibilities under much less risky conditions are at best duplicitous and at worse morally bankrupt.

Making a bureaucracy work requires focused leadership and management; anyone who has tried to run a large bureaucracy knows that it is not easy. But neither is advancing in the face of enemy fire, or patrolling on roads where an enemy often employs Improvised Explosive Devices or other forms of surprise attacks. Among the many leadership and managerial tasks necessary to make a bureaucracy work, attention to at least three — compliance regimes, performance gap-and-adaptation regimes, and by-pass or change regimes—are among the more important when it comes to war-waging responsibilities. They rise in importance because each reflects the adaptive leadership that waging war requires of senior political and military leaders. Each of the three managerial tasks listed above is linked to moving a bureaucracy out of its “comfort zone”—that is, out of what

Secretary Gates called “business as usual” and what Komer recognized as a bureaucracy’s “default position.”

Compliance regimes are those that involve setting and implementing monitoring mechanisms to enforce them. Conversations relative to compliance regimes are about whether individual or organizational behaviors meet standards, and if they do not, what behavioral changes are necessary to meet standards. There is no discussion about the standards themselves; they’re fixed. The discussion is only about “performance to fixed standards.” Such regimes are necessary, for example, to ensure contracting, acquisition, equipment accountability, or personnel actions are done according to law and regulation. Compliance regimes are examples of technical problems that waging war includes. Compliance regimes use authorities, known experts, who can provide solutions within a pre-existing framework.

Performance gap-and-adaptation regimes are not like that. These regimes are required because war poses mostly adaptive, not technical, problems to the senior political and military leaders who wage it. A performance gap-and-adaptation regime involves setting aims, identifying the means—strategies, policies, leaders, and resources, for example—necessary to attain those aims, then monitoring the gap between desired results and actual results, and adapting ends and means as necessary. Monitoring is not necessary to gain compliance; rather, it is necessary to adapt.

Conversations relative to performance gap-and-adaptation regimes are designed to identify the gap between an organization’s ends (what it wants to achieve) and the reality the organization is actually facing. These regimes are intended to help an organization

identify how to adapt the ways and means being employed to achieve its ends to close the desire/reality gap. They are also intended to stimulate a discussion about whether the ends are actually achievable. In a performance-gap-and-adaptation conversation, the only fixed point is reality. Adaptation—of ends, ways, means, or all three—is based upon the fixed point of reality. Reality may require changing ends (war aims), ways (strategies, policies, or military campaigns and operations), or means (leaders, force size and composition, funding), or some combination thereof. A performance gap-adaptation regime is necessary in the dynamic environment associated with any adaptive leadership challenge, like war, where initial assessments, decisions, and actions need constant reassessment and re-assessment. Corporate executives need a performance gap-and-adaptation regime,<sup>467</sup> so do senior political and military leaders who wage war.<sup>468</sup>

Using a compliance discussion where a performance gap-and-adaptation discussion is needed will inhibit an organization's success. For example, if war aims, strategies, or policies become "fixed standards" the resultant conversation will be compliance-oriented. The conversation will not include the viability of ends, ways, or means; it will only include a discussion of whether behaviors meet standards. Over time, a compliance regime discussion can produce an "unreality." Perhaps this is what led President Bush to say, "For two and a half years, I had supported the strategy of withdrawing our forces as the Iraqis stepped forward. But in the months after the [February, 2006] Samarra

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<sup>467</sup> Two of the many good business books on this topic are: Larry Bossidy and Ram Charan, *Execution*, op.cit.; and Stephen P. Bradley and Richard L. Nolan, *Sense & Respond: Capturing Value in the Network Era* (Boston, Massachusetts: Harvard Business School Press, 1998). Though called something different, performance gap-adaptation regimes are exactly what Heifetz and associates describe as necessary in any adaptive leadership situation.

<sup>468</sup> Robert M. Gates, *Duty*, op.cit., pp. 362-62

bombing, I had started to question whether our approach matched the reality on the ground.”<sup>469</sup>

Following his intuition, the President initiated a performance gap-and-adaptation discussion calling several outside the government experts to Camp David to a two-day, top-level review. “Nobody within the administration was prepared to directly challenge Rumsfeld or Casey in front of the President”—a clear indication that no adaptive leadership was being exercised.<sup>470</sup> As the President began a new review, General Casey seemed to have no doubts. “With [Prime Minister] Maliki and his cabinet in office and Zarqawi [leader of Al Qaeda in Iraq] out of the picture [because he was killed], the general was convinced that his strategy was on track—and that it was time to begin the withdrawal of the next few brigades of American troops.”<sup>471</sup> Whatever the reasons, whether conscious or not, the approach to monitoring the war in Iraq from 2004-2007 resembled more a compliance regime than a performance gap-and-adaptation regime. That began to change with the President’s Camp David review, and completely changed by the time the President selected a new strategy, new leadership, and new resource policies in 2007.

The third important leadership and managerial task necessary to make a bureaucracy work is a by-pass or change regime. This kind of regime involves identifying parts of a bureaucracy that do not perform as necessary, then either creating a way to by-pass underperforming portion of the bureaucracy or changing the bureaucracy. Conversations relative to by-pass or change regimes are about the difference between the speed at which

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<sup>469</sup> George W. Bush, *Decision Points*, *op.cit.*, p. 363.

<sup>470</sup> Michael R. Gordon and General Bernard E. Trainor, *The Endgame*, *op.cit.*, p. 208.

<sup>471</sup> Michael R. Gordon and General Bernard E. Trainor, *The Endgame*, *ibid.*, p. 208.



bureaucracies normally work and the speed necessary to support dynamic war efforts. The former is generally too slow for the latter. For example, the “routine” Pentagon process for buying new equipment is a multi-year, often decades-long process. Because of the numbers of casualties caused by Improvised Explosive Devices in Iraq, soldiers needed better protection much faster than the routine procedure would allow. Two bypass mechanisms were put in place, one by Secretary Rumsfeld and the other by Secretary Gates. The first delivered better counter measures; the second delivered better vehicles. Neither of these fast-delivered innovations would have been possible using routine systems.

General Marshall’s reorganization of the U.S. Army and its bureaucracies at the start of World War II is an example of a change regime. Another is the reorganization that President Lincoln’s Secretary of War effected during the Civil War. Many elements of these two changes continued after the war ended. A third example involves creation of entirely new staff organizations and processes needed to coordinate decisions and actions of both the American and British defense and military organizations during World War II. Only some of these changes continued after the war; others that were not longer useful or necessary, simply ended.

These three management processes, among others, are all necessary to wage war, but no one is sufficient. They are required within civil and military bureaucracies as well as among them. The point is that in addition to identifying adequate war aims, strategies, and policies, and in addition to directing that military campaigns or major operations take place, senior political and leaders must translate initial decisions into action, then adapt as the dynamics of war create new realities. They must have enough managerial expertise

to know when a compliance regime is applicable, when a performance gap-and-adaptation regime is needed, and how to establish and run both. They must have the capacity—usually developed from experience—to use, by-pass, or change the large organizations and bureaucracies for which they are responsible. And they must figure out how to coordinate the set of organizations and bureaucracies necessary to wage war sufficiently enough to create a coherent effort toward achieve war aims. Simply put, senior political leaders must be more than “politically reliable,” and senior military leaders must be more than “good warfighters.” Both must be competent leaders and managers, individually and as a set.

4. The Principle of War Legitimacy. This principle recognizes that even justified wars can lose their legitimacy. Legitimacy is a function of maintaining support of the population as one conducts a war which, in turn, is a function of righteousness of the war (a *jus ad bellum* concern) and progress toward probable success (a *jus in bello* concern). In effect, these three elements tie legitimacy directly to the competency of senior political and military leaders in executing their war-waging responsibilities.

When a war is perceived as just, its aims seen as achievable, and progress is being made toward achieving those aims, the casualties resulting from the war are viewed as “worth the cost” and the war viewed as legitimate. “The U.S. public makes reasoned and reasonable judgments about...fighting a war,” concludes one study. “Indeed,” the study continues, the public formed its attitudes regarding support for the war in Iraq “[by] weighing the costs and benefits. U.S. casualties stand as a cost of war, but they are a cost the public is willing to pay if it thinks the initial decision to launch the war was correct,

and if it thinks the United States will prevail.”<sup>472</sup> The “righteousness” of the decision to launch a war is tied to *jus ad bellum*; progress toward prevailing in a war is a matter of the conduct of the war, *jus in bello*, in both its war-fighting and war-waging dimensions. In sum, the result of senior political and military leaders who cannot execute their war-waging responsibilities sufficiently well may be erosion of the very legitimacy of the war.

Fighting a war poorly is one way to erode legitimacy; waging war poorly is another. In the Vietnam War, the American military was never defeated on the battlefield. It fought well. The way the U.S. waged the war, however—its war aims, its strategies, its policies, its campaigns and major operations—ultimately eroded American popular support. The costs were seen by the American people as “not worth it.” The war-waging activities of this period were more an example of sustained imprudence than proficiency, more like incompetent rather than expert leadership.

Over time incompetence or sustained imprudence tells the American people that the war is not being won and possibly cannot be won, so continuing the war is not “worth the cost” of lives or treasure. Thus war-waging capacity and legitimacy are connected. Such appears to be the case with respect to the war in Afghanistan. In 2001, for example, only 9% of polled Americans thought the war in Afghanistan was a mistake; in 2013 that number is 44%.<sup>473</sup> The “righteousness” of this war has not changed, but the way it has been waged has led 74% of Americans to conclude to either stick to the 2014 withdrawal date or accelerate withdrawal.<sup>474</sup>

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<sup>472</sup> Peter Feaver, et.al., “Success Matters,” *op.cit.*, p. 8.

<sup>473</sup> February 14, 2014 Gallup poll available at: <http://www.gallup.com/poll/116233/afghanistan.aspx>.

<sup>474</sup> February 14, 2014 Gallup poll available at: <http://www.gallup.com/poll/116233/afghanistan.aspx>.

Not all war-waging errors lead to defeat or loss of legitimacy. World War II, for example, started off poorly. A period of rapid and significant decline in American military capacity followed World War I. “Victory in World War I had bred complacency and inhibited imaginative ideas and experiments in doctrine, organization, and materiel. A revulsion against war in general and disillusionment with World War I in particular, together with faith in the oceans as bulwarks of protection,...prompted retreat into national isolation....Because of the great...depression, congressional appropriations dwindled, manpower...declined, and...procurement languished. Even after World War II began in Europe, the American public...remained lethargic toward military issues....for two decades after 1920 the Army and National Guard together were quite incapable.”<sup>475</sup> Equally incapable were the war-waging systems necessary to raise, train, organize, equip, deploy, employ, and sustain a large military force fighting around the world. In November of 1942, American troops were first introduced in the European Theater in North Africa. The first main battle of that theater or war, the battle of Kasserine Pass, was a disaster. By May of 1943, enemy resistance had ceased and the campaign for North Africa was over. The American military forces had learned, and learned quickly, what succeeded on the battlefield. They became a better war-fighting organization. As one historian wrote, “No soldier in Africa had changed more—grown more—than [General Dwight] Eisenhower.”<sup>476</sup>

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<sup>475</sup> Martin Blumenson, “Kasserine Pass, 30 January-22 February 1943,” in Charles E. Heller and William A. Stofft, editors, *American's First Battles: 1776-1965* (Lawrence, Kansas: University of Kansas Press, 1986), p. 226.

<sup>476</sup> Rick Atkinson, *An Army at Down: The War in North Africa, 1942-1943* (New York: Henry Holt and Company, 2002), p. 533. See also Jean Edward Smith, *Eisenhower in War and Peace* (New York: Random House, 2012), Kindle locations 3761-4881.

In a matter of months, a defeat in a battle was quickly turned into a successful campaign. The defeat at Kasserine Pass did not result in questioning the legitimacy of the war. Had defeat followed defeat, however, over time progress and perhaps even ultimate success in the war may have become an issue. Senior political and military leader war-waging competency—the capacity to do what it takes to select achievable aims, identify strategies and policies to attain those aims, translate decisions into orchestrated military and non-military action, and adapt as a war unfolds—plays an important role in building, maintaining, or eroding legitimacy. Senior leaders who fail to develop sufficient leadership and managerial abilities with respect to their war-waging responsibilities gamble with legitimacy. The war’s legitimacy may survive, but such a gamble is not one that a senior wartime leaders should take.

5. The Principle of Resignation. This principle recognizes that senior political or military leader resignation is permissible under certain conditions. Senior political and military leaders remain moral agents, not “mere instruments” of a government, but this principle is limited by the necessity to retain civil control of the military in a democracy.

The problem of resignation is twofold. On one hand, resignation is necessary. Resignation acknowledges that everyone, including senior political and military leaders, remains a moral agent responsible for his or her conscience. Resignation is also a useful recuperative mechanism that helps large organizations know when there are significant problems in what that organization is doing or how it is doing it. Finally, resignation is useful in a performance-oriented, dialogue-and-execution regime, for it provides a way to ensure no participants can merely be steamrolled into agreement. On the other hand,

resignation has a significant potential downside, especially applicable to the senior military leaders in a democracy: it can be or be perceived as a direct challenge to civil authority, civil primacy, and civil control of the military. The principle of resignation attempts to allow for the positive and necessary aspects of resignation while avoiding or mitigating resignation's downside.

In the right circumstances, resignation often provides a healthy and necessary organizational recuperative mechanism, as Albert O. Hirschman argues in *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*.<sup>477</sup> Hirschman describes “exit,” the option to leave, in three ways. If there is a decline in price, availability, or quality of a product, consumers “exit” by going elsewhere to buy or invest. If the decline is in management proficiency, a corporate executive may “exit” by leaving the firm. And if the decline is in deteriorating governmental performance, then the “exit” is an official leaving his or her position.<sup>478</sup> “Voice,” according to Hirschman, is the option for a consumer, executive, governmental official, or some form of “watchdog” organization to complain or attempt to improve by pointing out the decline and need for change.<sup>479</sup> In many cases both options are available, even though one option or the other may be preferable in any given situation or organization. “Exit” and “voice” are ways that can help firms, organizations, and governments (at least non totalitarian governments) know that what they are doing isn’t working and be prompted to do something about it.

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<sup>477</sup> Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, Massachusetts: Harvard University Press, 1979), pp. 1-20.

<sup>478</sup> Albert O. Hirschman, *Exit, Voice, and Loyalty*, *ibid.*, pp. 21-29, 44-61, and 76-126.

<sup>479</sup> Albert O. Hirschman, *Exit, Voice, and Loyalty*, *ibid.*, pp. 30-54 and 76-126.

Hirschman recognizes, however, that “while feedback through exit or voice is in the long-run interest of organization managers, their short-run interest is to entrench themselves and to enhance their freedom to act as they wish, unmolested as far as possible by either desertions or complaints.”<sup>480</sup> In other words, some managers and leaders don’t want feedback; they want silence and compliance with the plan—even in the face of evidence that what they are doing is not working. These managers and organizations simply shut down both exit and voice to impose discipline. Such is the case with autocratic managers where compliance and obedience are more important than success or progress and where threat of punishment replaces leadership; it is also the case in totalitarian governments where neither citizens nor leaders can leave or complain.

Denial is a second common organizational response. The customers, members, or leaders of an organization simply deny the report of decline. This response is common for customers, members, or leaders who have invested a great deal and so has a considerable stake in the product, service, plan, or the organization in general.<sup>481</sup> In the case of senior leaders, this investment may have been a lifetime of service that included difficult sacrifices which, in turn, generated significant loyalty. In fact, Hirschman points out, the more loyal a person is to an organization, the more he or she has invested in the organization or a specific product, service, or activity within the organization, the greater the ability to deny reports of decline. The loyalist—especially one who has been a senior leader in the organization—has great difficulty coming to the belief that his or her organization could decline or deteriorate in the ways some are pointing out.<sup>482</sup>

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<sup>480</sup> Albert O. Hirschman, *Exit, Voice, and Loyalty*, *ibid.*, pp. 92-93.

<sup>481</sup> Albert O. Hirschman, *Exit, Voice, and Loyalty*, *ibid.*, p. 93.

<sup>482</sup> Albert O. Hirschman, *Exit, Voice, and Loyalty*, *ibid.*, p. 94-96.

Co-opting criticism, Hirschman demonstrates, is a third common organizational response to criticism. In this case, the organization “domesticates the dissenters.”<sup>483</sup> The doubter is kept on and given an explicit role as “devil’s advocate” or as a member of “the red team.” In this way the dissenter’s conscience may be assuaged, but his or her effectiveness is reduced to a point where it is virtually discountable. Co-opting forces the dissenter to give up, *a priori*, his or her strongest weapon: the threat to resign under protest.<sup>484</sup>

Whether managers and organizations choose to shut down, deny, or co-opt, the result is the same: it denies the government—or other type of organization that might use them—needed recuperative mechanisms. When one or more of these approaches are employed, organizations are simply robbed of the ability to recognize and restore deteriorating quality in product or performance.<sup>485</sup>

General Harold K. Johnson, the Army’s Chief of Staff from 1964 to 1968 during the Vietnam War, considered “exit,” but rejected it. Doing so, he may have robbed the United States in ways to which Hirschman refers. “When the President elected not to follow the advice of the Joint Chiefs of Staff, they had little choice but to go along or resign,” says the historian and biographer Lewis Sorley.<sup>486</sup> He quotes General Johnson who said, “We had made our recommendations....Our advice had been rejected and other courses of action were chosen, so we simply were good soldiers and did what we were told to do.”<sup>487</sup> Voice had failed, so at one point in his tenure, General Johnson concluded

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<sup>483</sup> Albert O. Hirschman, *Exit, Voice, and Loyalty*, *ibid.*, p. 115.

<sup>484</sup> Albert O. Hirschman, *Exit, Voice, and Loyalty*, *ibid.*, pp. 115-116.

<sup>485</sup> Albert O. Hirschman, *Exit, Voice, and Loyalty*, *ibid.*, p. 117.

<sup>486</sup> Lewis Sorley, *Honorable Warrior*, *op.cit.*, p. 268.

<sup>487</sup> Lewis Sorley, *Honorable Warrior*, *ibid.*, p. 268.



that he had to resign. He said, “I remember the day I was ready to go over to the Oval Office and give my four stars to the President and tell him, ‘You have refused to tell the country they cannot fight a war without mobilization; you have required me to send men into battle with little hope of their ultimate victory; and you have forced the military to violate almost every one of the principles of war in Vietnam. Therefore, I resign and will hold a press conference after I walk out of your door.’”<sup>488</sup>

Had General Johnson resigned because he could not reconcile the legal orders he was given with his understanding that the lives of soldiers were simply being wasted—therefore, his legal orders were immoral, he would not have gone to his grave, in his words, “with that lapse of moral courage on my back.”<sup>489</sup> In holding a press conference, however, General Johnson would have changed an individual act of moral courage to a challenge to one of the bedrock principles of a democracy: civilian control of the military.

When fighting, neither soldiers nor their military leaders are “mere instruments.” Rather, they remain moral agents. The principles governing *jus in bello*’s tactical, war-fighting dimension mandate that soldiers and their military leaders retain their moral agency. “Soldiers,” Walzer reminds all, “can never be transformed into mere instruments of war...Trained to obey ‘without hesitation,’ they remain nevertheless capable of hesitating...it is a mistake to treat soldiers [or their military leaders] as if they were automatons who make no judgments at all.”<sup>490</sup> Senior military leaders, too, remain moral agents. As such, they remain responsible for the decisions and actions they take. The

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<sup>488</sup> Lewis Sorley, *Honorable Warrior*, *ibid.*, p. 304.

<sup>489</sup> Lewis Sorley, *Honorable Warrior*, *ibid.*, p. 304.

<sup>490</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, p. 311.

“I’m only following orders” argument doesn’t hold much water for a soldier or a general, neither does the “they’ll only get somebody else” argument.

Leaving a position of significant responsibility is difficult. Deception is very strong, as is co-opting. Any “final policy decision,” Hirschman shows, “can always be made to look as some middle course between the two opposing points of view...hence [all] are made to feel that ‘if it had not been for me, an even more sinister decision would have been taken.’”<sup>491</sup> The desire to remain close to power is also very strong. Hirschman suggests a variant to the famous dictum, “power corrupts and absolute power corrupts absolutely.” His variant is this: “Power corrupts; and even a little influence in a country with huge power corrupts hugely.”<sup>492</sup> Finally, the organization itself may have formal or informal norms that treat either exit or voice as disloyalty, even treason or mutiny. These kinds of norms are very powerful and pose significant difficulty to those considering resignation or major criticism. Such difficulty is natural; concluding to resign should be hard.

Difficulty, however, does not set aside a senior leader’s responsibility to his or her conscience, or responsibility to the larger institution and the nation that those leaders serve. Loyalty sometimes requires criticism; this is the premise of Hirschman’s argument. To operate properly and especially in war, the nation to which a senior leader is loyal needs to know when its war aims, strategies, policies, and military operations are failing. Without this feedback, whether expressed through voice, as should take priority

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<sup>491</sup> Albert O. Hirschman, *Exit, Voice, and Loyalty*, *op.cit.*, p. 116.

<sup>492</sup> Albert O. Hirschman, *Exit, Voice, and Loyalty*, *ibid.*, p. 116.

in the case of senior military officers, or exit, the choice of last resort, the nation diminishes its chances of recuperating from deteriorated performance.

With respect to senior military leaders, however, resignation or criticism must be exercised in a way that does not challenge civil control of the military: “candidly and privately,” in the words of Secretary Gates—at least for senior military leaders.<sup>493</sup> Exit or voice options for senior civilian leaders are a bit different. Because their resignation or dissent does not threaten civil control of the military, senior civilian dissent can be more public—the case of Senator Eugene McCarthy or the public Congressional leaders and presidential candidates who debated over Iraq and Afghanistan, are good examples.

Mass resignations of senior military officials like that considered by the Joint Chiefs during the Johnson Administration, or public resignations like General Johnson’s would have been, are problematic because of the threat to civilian control. Public criticism of senior political leaders still in office, as Secretary Rumsfeld was subjected to by several retired general officers, is similarly problematic because this kind of criticism also challenges, directly or indirectly, civil control of the military. Resignation simply because “advice is ignored” is also problematic, but for different reasons. Here petulance seems more at play than morality or the desire to provide the nation an opportunity to recuperate from deteriorated performance.

General Maxwell Taylor provides an interesting example of public criticism of policy without challenge to civil control over the military. After he retired as Chief of Staff of the U.S. Army in 1959, he wrote *The Uncertain Trumpet*.<sup>494</sup> In it, he criticized the U.S.

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<sup>493</sup> Robert Gates, *Duty, op.cit.*, p. 370.

<sup>494</sup> Genral Maxwell D. Taylor, *The Uncertain Trumpet* (New York: Harper & Brothers, Publishers, 1959).

policy of massive retaliation. He called this policy “the Great Fallacy,”<sup>495</sup> that is, the false belief that “the use or threatened use of atomic weapons of mass destruction would be sufficient to assure the security of the United States and its friends.” He argued against basing U.S. national security on this fallacy and for a strategy of flexible response whereby the United States would be just as capable of deterring limited war as it would be for preventing World War III.

General Taylor’s book was a challenge to the logic of massive retaliation, whether such a policy made sense given the strategic realities of the early Cold War period. It did not challenge the authority and responsibility of senior political leaders to make this kind of policy choice. Nor did it challenge civilian control of the military. Rather, it was the kind of “voice” Hirschman describes as a necessary recuperative mechanism. General Taylor’s “voice” was a private matter while he was on active duty, expressed with candor but kept within the appropriate “protected space” necessary for a proper civil-military dialogue. American civilian leaders ultimately adopted a more flexible response strategy, and General Taylor was recalled to active duty to become President Kennedy’s choice for Chairman of the Joint Chiefs of Staff in 1962.

Voice seems to have a recognized place with respect to senior political and military leaders, but not exit. Richard Kohn, for example, rejects resignation even if kept private. He writes, “Resignation—even the very hint of it, much less the threat or the act—is a direct assault on civilian authority. Civilian officials rightly interpret it as such. It inherently violates civilian control.”<sup>496</sup> Kohn believes that all lawful orders, even if

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<sup>495</sup> General Maxwell D. Taylor, *The Uncertain Trumpet*, *ibid.*, p. 4.

<sup>496</sup> Richard H. Kohn, “Building Trust,” *op.cit.*, p. 282.

immoral, are to be followed. Kohn correctly points out that “even military officers at the very top of the chain of command...cannot know all of the larger national and international considerations involved, a calculation that belongs properly to the political leadership, elected and appointed. Nor is there historical evidence that military judgment has been superior to that of the politicians.”<sup>497</sup> In this, Kohn is exactly right. The scope of the president’s responsibility is larger than the scope of a general’s. That’s why resignation over mere disagreement or the feelings of being ignored, disrespected, or treated badly is wrong. A conclusion to resign cannot be taken this lightly.

Those are not the grounds that General Johnson cites, however. What distinguishes General Johnson’s frustration with military advice not being taken or the chiefs being cut out of many decisions—situations which did not prompt him to consider resignation—from his moral anguish is this: the strategies and policies in Vietnam had deteriorated to the point of wasting the lives of citizens-who-become-soldiers in a war that could not have been won, at least not in the way it is being fought. His was not a problem about not knowing “all of the larger national and international considerations,” as Kohn puts it. Rather, his was a problem about what he did know: that the lives of citizens-who-became-soldiers were being wasted. His was a moral problem that involved recognizing first that the value of human life is such that, while under certain circumstances it can be used, it cannot be wasted, and secondly that he, his fellow Chiefs, the President, and other senior political leaders are co-responsible for the lives they use. The issue was not whether he believed that he must obey distasteful, seemingly foolish, or sometime disastrous orders. He knew that he must, after all he fought the futile defense of the

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<sup>497</sup> Richard H. Kohn, “Building Trust,” *ibid.*, p. 282.

Philippine Islands following the 1941 Japanese invasion, was captured, and survived the Bataan Death march, Japanese hell ships, and the neglect, brutality, illness, and starvation of extended captivity until September 1945. General Johnson's issue was one of moral agency.

Neither good order and discipline, nor civilian control of the military is at risk over the exercise of moral agency. If soldiers and leaders are to remain moral agents on the battlefield, they must be moral agents in the boardroom as well. Further, Hirschman might add, correct exercise of moral agency in some circumstance might result in a better organizational performance.

General Johnson has no responsibility for the consciences of others, but he does have responsibility for his own, to the citizens-who-become-soldiers that he leads, and to the nation he serves. Absolute prohibition of resignation is unwarranted because it denies the individual moral agency and denies the institution an important recuperative mechanism.

### **The sources and purposes of *jus in bello*'s war-fighting principles.**

The source of Walzer's war-fighting principles is clear: usage. They are revealed, Walzer claims, in the ways in which men and women—some who are citizens, some who are soldiers, others who leaders—argue about war.<sup>498</sup> They are embedded in the explanations, justifications, and judgments ordinary people, as well as those responsible for the action in question, use.<sup>499</sup> When moral philosophers analyze these arguments,

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<sup>498</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, p. xiii.

<sup>499</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. xv.

justifications, and judgments, Walzer shows, they seek out coherence, lay bare the principles that the arguments, justifications, and judgments exemplify.<sup>500</sup> Walzer is claiming that those who use the arguments, present the explanations or justifications, and make judgments are making statements as “to their own principles,” even though the principles may be worded and arranged more informally than they are when codified in just war theory.<sup>501</sup> Walzer codifies the war-fighting principles from the analyses, arguments, justifications, and judgments contained in *Just and Unjust Wars*’ historical illustrations: the principles of non-combatant immunity, double effect and double intent, proportionality, due care and due risk, and supreme emergency.

War-fighting principles, part of what Walzer calls “the war convention,” are the principles that circumscribe what is morally permissible in combat. The war convention is “the set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgments of military conduct.”<sup>502</sup> It is the case that the decisions are left to soldiers and their leaders who are on the spot, but one of the points of having principles is for them to be used in clarifying expectations and guiding those decisions—prior to combat in training and education, during combat in decision and execution, and after combat in judging what was done. The principles are not in question, but their application in a specific case often is questioned. Whether the principles were applied in a particular, oft-confused and stress-filled situation correctly is “the cruelest decision,” not whether the principles are valid guides in the exercise of a soldier’s or a leader’s moral responsibilities in combat.

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<sup>500</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. xv.

<sup>501</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. xv.

<sup>502</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 44.

Walzer's war-fighting principles serve multiple purposes. More than guides for soldiers and their leaders in combat, they also act as a framework to explain and justify war-fighting decisions and actions. They also provide the framework within which one can identify whether and under what conditions moral blame is warranted. If asked, soldiers and leaders appeal to the war-fighting principles—even if unconsciously and indirectly—by saying the act in questions was “militarily necessary,” that they used “only the necessary force,” that they “tried to care for” the innocent, that they “never intended to harm noncombatants,” and that “the death of the innocent was unavoidable.” An investigation, if one is conducted, may find that they were correct, or not, but the principles provide a way to judge moral blameworthiness after explanations and justifications are given, even if the act in question broke no law.

Rights, as chapter 1 explained, lay the foundation for the principles governing *jus in bello*; they also play an important role in understanding war-fighting responsibility in war. “Individual rights (to life and liberty),” Walzer says, “underlie the most important judgments that we make about war,” even though taking another's life in war is, under specific circumstances, justified.<sup>503</sup> Walzer's understanding of the right to life is neither absolute, nor merely the result of arbitrary conventions or utility, for then justifying taking another's life in war would be too easy. So he calls these rights “something like absolute” and claims that civilian non-combatants retain their right to life; soldiers do not.<sup>504</sup> “Simply by fighting,” Walzer claims and as was seen in chapter 1, “[soldiers]

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<sup>503</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 54.

<sup>504</sup> Elsewhere I have a more complete analysis of Walzer's use of rights in his just war theory. See: James M. Dubik, “Human Rights, Command Responsibility, and Walzer's Just War Theory,” *op.cit.*, pp.354-71.



have lost their title to life and liberty....everyone else retains his rights.”<sup>505</sup> The war convention rests on a certain view of noncombatants, which holds that they are men and women with rights and that they cannot be used for some military purpose, even if it is a legitimate purpose.”<sup>506</sup> Walzer understands that war necessarily places civilians in danger; that is another aspect of its hellishness. The principles of the War Convention restrict the hellishness of war by demanding that soldiers and their officers minimize the danger they impose on civilians; hence the principle of “due care and due risk.”<sup>507</sup>

*Jus in bello*’s war-waging principles also arise from usage. They have similar purposes, and they too are founded on a respect for the value of human life, individual and communal. They are different, however in two respects. First, *jus in bello*’s war waging principles apply to senior political and military leaders whose decisions and actions affect the conduct of war but who are far from the battlefield. Second, *jus in bello*’s war-waging principles, with the exception of the principle of resignation, apply to processes not particular decisions and actions. This difference results from the nature of the war-waging problems that senior political and military leaders face, adaptive problems that cannot be understood, let alone solved, by a single authority. Rather, the adaptive problems involved in waging war require a set of civilian and military leaders to create collaborative processes and forums in which the understanding and resolving of adaptive problems can emerge. The adaptive problems involved in waging war also require that the set of leaders then use, adapt, or change their bureaucracies to execute

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<sup>505</sup> Micheal Walzer, *Just and Unjust Wars*, *op.cit.*, p. 136.

<sup>506</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 137.

<sup>507</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 156.

decisions. Last, the adaptive problems in waging war require the set of leaders to adapt their understanding, decisions, and actions to the dynamics of war as they unfold.

Usage, actual war-waging discussions, is revealing. Norms and principles are often not revealed in the acts themselves. Rather, they are found in explanations and justifications adduced by those who acted; they are also embodied in the expectations that underlie questions concerning actions taken. The discussion over what happened in the Abu Ghraib prison in 2003 and 2004 and why it happened, for example, concerned not only the individual acts of soldiers and leaders on the ground, but also war-waging policy issues over the adequacy of training and personnel selection as well as discussions about the effect of national policies on what took place in the prison.<sup>508</sup> Important expectations and assumptions are embedded in the discussions surrounding Abu Ghraib and both presidential decisions. The Abu Ghraib discussion assumed that the conduct of war involved more than war-fighting. Those in the discussion assumed that the political and military leaders far from the battlefield had responsibilities that affected the conduct of the war. The expectation was that senior leaders understand how their decisions will play out in practice and consider, therefore, the practical consequences of their decisions.

The public discussion in late fall of 2006 over whether President Bush's administration should "stay the course" in Iraq or take a new direction and the 2009 discussion surrounding President Obama's decision three years later whether his administration

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<sup>508</sup> Of the many articles, reports, monographs, and books on Abu Ghraib, the following are sufficient for purposes of this study: [http://www.washingtonmonthly.com/features/2004/0411\\_carter.html](http://www.washingtonmonthly.com/features/2004/0411_carter.html), [http://strategicstudiesinstitute.army.mil/pubs/parameters/Issues/Summer\\_2013/6\\_Mastroianni\\_Article.pdf](http://strategicstudiesinstitute.army.mil/pubs/parameters/Issues/Summer_2013/6_Mastroianni_Article.pdf), and <http://news.bbc.co.uk/2/hi/8012036.stm>.

should change courses in Afghanistan both are examples of explanations and justifications providing a window into principles.<sup>509</sup>

The public discussion surrounding both decisions often concerned the degree to which consultation and collaboration among senior political and military leaders had preceded the final decision—continuous dialogue. The discussions also concerned the realities in Iraq and Afghanistan and the degree to which the Bush or Obama administrations’ strategies and policies should change because of the ways the wars had unfolded—continuous dialogue and adaptation. Next, throughout both discussions, regardless of the position taken on the pending decision, all assumed that the President had final decision authority. Further, all assumed that both senior political and military leaders shared the responsibility to help the President make the best decision and that the military and non-military agencies and departments involved would be capable to execute whatever decision was made—final decision authority and managerial competence. Finally, the discussions surrounding both decisions recognized, whether they believed the resultant decision to be reckless or responsible, that the lives of citizens-now-soldiers and the legitimacy of the war were at stake in the final decision,—war legitimacy. In other words, the public discussion of these two important presidential decisions pointed to principles that guide, or should guide, those who have the final say in decisions, those who participate in the decision making process, and those who execute war-waging decisions.

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<sup>509</sup> The following four reports summarize the “stay the course” discussion: <http://thinkprogress.org/security/2006/10/24/8252/rumsfeld-stay-course/#>, <http://mediamatters.org/research/2006/10/26/hume-reported-bush-has-stopped-using-the-phrase/137080>, [http://www.nytimes.com/2006/10/24/world/middleeast/24policy.html?pagewanted=print&\\_r=0](http://www.nytimes.com/2006/10/24/world/middleeast/24policy.html?pagewanted=print&_r=0), and <http://www.cbsnews.com/news/bush-drops-stay-the-course-phrase/>.

As was the case with Walzer's war-fighting principles, usage—the actual discussions and arguments made over war-waging activities as well as the explanations and justifications used and the judgments pronounced reveal a moral depth beyond a discussion of a particular act, incident, or decision.

War-waging principles, like their war-fighting cousins, serve multiple purposes. The five war-waging principles provide a framework that senior leaders can use to explain and justify their decisions and actions or for citizens or their representatives to question, judge, and when appropriate assign moral blame. The principles also provide the framework for public discourse—whether in the media, during Congressional testimony, or some other public forum. As the public discussion over President Bush's 2006 decision concerning Iraq and the 2009 discussion surrounding President Obama's decision over Afghanistan showed, both those in the decision-making discourse or those commenting on it appealed to one or more of the war-waging principles by saying the decision or act in questions was the result of "extensive civil-military consultation," that the "final decision was made by a proper authority," that "we're making progress," "that as things change we're changing with them," and that "we're doing everything possible in execution." In neither of these cases did a senior political leader say anything like, "I thought this up all by myself and ordered the military to do it, like it or not," nor did a military leader say, "Yes, I was told to do that. I don't agree with it, so I'm not doing it." The war-waging principles of *jus in bello* codifies practice, just as do *jus in bello*'s war-fighting principles.

Finally, the set of war-waging principles is useful in the training, education, and selection of political and military leaders who wage war. These principles, the associated

responsibilities, and the tri-partite tension from which both are derived begin to describe the requirements for war-waging leadership.

The value of human life, of the innocent, of citizens-who-become-soldiers, and of the political community form the foundation war-waging principles, responsibilities, and the tri-partite tension inherent in waging war. The senior political and military leaders who wage war, those whose responsibility it is to identify proper war aims, strategies, and policies, and to direct military campaigns and major operations, ultimately use or put at risk lives. Respecting the individual lives that are entrusted to one's care, takes on a greater importance when "care" is replaced by "use." Respecting the value of human life, even as it is used, demands of those responsible that the lives are used well, not wasted. Respecting the value of human life, even as it is put at risk, demands of those responsible that the risk is prudent. Further, waging war risks the life of the political community, sometimes existentially. Even if the risk is not existential, how a war is waged can, and often does, have a profound effect on the life of the political community.

War-waging responsibilities are positional responsibilities, responsibilities tied to some role or position, not "natural duties" which are moral requirements which apply more generally to all.<sup>510</sup> Positional responsibilities, like those of senior political and military leaders who wage war, come to only those individuals filling the position to which the responsibility is tied. That is, senior political and military leaders have "certain performances expected or required of [them] within the scheme in question."<sup>511</sup> Senior political and military leaders are in their positions voluntarily; they sought, or at least

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<sup>510</sup> A. John Simmons, *Moral Principles and Political Obligations* (Princeton, New Jersey: Princeton University Press, 1979), pp. 12-13; John Rawls, *A Theory of Justice* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1971), pp. 114-117 and 333-342.

<sup>511</sup> A. John Simmons, *Moral Principles and Political Obligations*, *idid.*, p. 12-13.

accepted, the positions they are in. These senior leaders entered their positions with their eyes open, sufficiently informed as what duties and responsibilities the position involved; their promise to fulfill the responsibilities of their office obligated them.<sup>512</sup> When they fail to execute these responsibilities in waging war, they are not just politically liable putting their reelection at risk. They are also morally liable because of the lives, individual and communal, that they use or put at risk.

Where Walzer uses his principles to describe “right conduct in the midst of battle”—the tactical level of war’s conduct, the war-fighting principles describe “right conduct” at the strategic level of war’s conduct. The principles of Walzer’s war convention apply to the battlefield; the war-waging principles apply in the boardroom. The war-waging principles complete the description of justice in war.

### **Conclusions: Jus in bello, a complete account.**

The war-waging principles described in this chapter expand the practical morality that Walzer intended to describe in *Just and Unjust Wars*, thus providing a more complete understanding of the moral dimension of war. The combatant/noncombatant distinction; principles of proportionality, double effect, and double intent; as well as the principle of due care/due risk contain a suitable moral framework intended to guide moral action in combat and amid the tension of winning and fighting well.<sup>513</sup> That is, soldiers and their leaders are to use them, apply them as they fight. Application under the real conditions of war is always difficult. “All we can require,” Walzer admits, “is serious efforts of

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<sup>512</sup> A. John Simmons, *Moral Principles and Political Obligations*, *idid.*, pp. 16-21.

<sup>513</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, pp. 34-47 and 127-159.

specific sorts; we cannot require success, since the conditions of warfare are such that success isn't always possible.”<sup>514</sup>

Similarly, the war-waging principles provide the men and women who face the hard choices involved in waging war with a set of guides and way of explaining and justifying what they are doing or have done to those whose lives they use or put at risk. They also provide a framework to explain what they are doing on behalf of the political community in whose name they act. Both sets of principles, war-fighting and war-waging, provide the citizenry at large a way to judge what is done on their behalf, whether in combat or in capital cities. Citizens, and their representatives, can use both sets of principles to understand and support a war or expose the hypocrisy or blameworthiness of those fighting or those waging war. The principles exist, and their recognition matters.

Recognition of both war-fighting and war-waging principles matters first because they are the moral standard to which the United States holds its political and military leaders and its military forces. At the war-fighting level, one need only recall the outrage over U.S. soldier behavior in the Abu Ghraib prison in Iraq, or the My Lai massacre in Vietnam—to name two prominent examples. At the war-waging level, one need only be reminded of the “disproportionate, powerful impact on American presidents, politics, and policy” that the Vietnam War has had.<sup>515</sup> As Marvin and Deborah Kalb say in *Haunting Legacy: Vietnam and the American Presidency From Ford to Obama*, “No president can any longer reach critical decisions about committing troops to battle...without weighing the consequences of the American defeat in Vietnam. The war still casts an unforgiving

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<sup>514</sup> Michael Walzer, *Just and Unjust Wars*, *ibid.*, p. 321.

<sup>515</sup> Marvin and Deborah Kalb, *Haunting Legacy: Vietnam and the American Presidency From Ford to Obama* (Washington, D.C.: Brookings Institution Press, 2011), Kindle Location 56.

shadow over Oval Office deliberations. Unwanted, uninvited, but inescapable, Vietnam refuses to be forgotten.”<sup>516</sup>

Secondly, recognition matters because these principles are used to make both war-fighting and war-waging judgments. With respect to war-fighting, the judgments concern which acts committed in war are legitimate and which are not, which can be justified and which cannot. With respect to waging war, the judgments concern whether the aims, strategies, policies, resources, and major operations have been made and executed well or not, whether—as President George W. Bush reports in *Decision Points* so often—the lives of citizens-who-become-soldiers are used well or wasted. Both sets of principles allow argument about decisions and action taken in war, about justifying certain conduct and condemning other, and judging the soldiers and leaders, tactical and strategic, civilian or military, who were involved.<sup>517</sup> Those doing the arguing, justifying, and judging are sometimes soldiers themselves. Or those arguing may be senior civilian policy makers in Congress or the Executive Branch or senior military leaders, active and retired. At other times, those doing the arguing, justifying, and judging may be the society at large, whether through the media or direct “communications” via protests or demonstrations. In sum, both war-fighting and war-waging principles are part of the language and logic of war’s moral dimension—a language and logic as important as any other dimension of war.

Finally, recognition matters because war-fighting and war-waging principles can become part of the training, education, and development of soldiers and their military

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<sup>516</sup> Marvin and Deborah Kalb, *Haunting Legacy*, *ibid.*, Kindle Location 125.

<sup>517</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, p. xiii.



leaders, tactical and strategic, and they can become part of the education of potential senior political leaders. These principles require that soldiers be taught that they are never “mere instruments” or “killing machines,” but always remain moral agents—even in combat. Leaders, officers and sergeants, set the behavior climate within their organizations. Just as the climate a leader sets can result in high discipline or low, can produce a well trained organization or not, it can be a climate tolerant of moral abuse or one that prevents it. Similarly, these principles require that senior political and military leaders are never “mere instruments,” but always are moral agents—even in the boardroom. Senior political leaders set the climate for the war-waging decision and execution dialogue. This climate can either increase or decrease the probability of making decisions and taking action that are “right or at least not too wrong.” This climate also can increase or decrease the probability of adapting to the ever-changing realities of war, or being stuck to a cycle of sustained imprudence. Thus, the climate senior political leaders set helps determine whether lives are used well or wasted, whether the innocent are place under necessary risk or unnecessary, and whether the life of the political community is put at risk or strengthened.

In some ways, neither the war-fighting nor the war-waging principles and the positional responsibilities that derive from them are new. They are part of the historical record of every war. War as a political act and the consequential essentiality of both the civil and military perspectives are long recognized in theories of war, within the military profession, within political science, and among national security theorists and practitioners. But neither the war-waging principles nor the derivative responsibilities

have been sufficiently recognized by moral philosophers in just war theory. This deficiency results from a fundamental misunderstanding of the conduct of war.

Conducting a war involves both fighting it and waging it. *Jus in bello*, that area of just war theory that describes moral responsibility in the conduct of war, must therefore address both dimensions of war's conduct. This study attempted to fill the prevailing view's gap in *jus in bello* by describing what acting justly in war means at the strategic, war-waging level. The five war-waging principles—plus the tri-partite tension inherent in waging war—more completely circumscribe the moral dimensions of war's conduct. Together with the traditionally recognized war-fighting principles and responsibilities, therefore, the war-waging principles and responsibilities of *jus in bello* contribute to describing justice in war. Undeniably, the contents of this study will be found deficient. Equally undeniable, however, the content of this study advances the understanding of the moral dimension of war and may stimulate more discussion about an important dimension of just war theory that the prevailing view omits.

## **Epilogue**

This study set out to identify and describe a yet unrecognized aspect of *jus in bello*, the portion of just war theory that deals with justice in the conduct of war. The study found that Walzer, as the prime representative of the prevailing view of just war theory in the United States, restricts *jus in bello* to combat, war-fighting. Then, using this restricted understanding of *jus in bello*, Walzer constructs a theory of responsibility and presents a set of principles that guide action for those responsible for fighting. The study found further that Walzer's restricted view is necessary but insufficient, for it omits an important dimension of the conduct of war: the strategic, war-waging dimension. Simply put, the conduct of war involves both war-fighting and war-waging dimensions. For *jus in bello* to be complete, therefore, it must recognize the strategic dimension of war's conduct, then expand to include an account of responsibility for waging war and a set of principles useful to guide decisions and actions within and to make judgments about this dimension of war's conduct.

The war-waging dimension of war's conduct involves setting war aims, identifying strategies and policies as well as allocating resources and conducting campaigns and major operations necessary to achieve those aims. It also involves adapting initial decisions as to aims, strategies, policies, resources, and campaigns to the ever-changing realities that unfold during a war. In addition, it involves making the machinery of government and military bureaucracies work in execution of the identified strategies policies, in making available the identified resources, and in supporting the directed campaigns and military operations.

This strategic, war-waging dimension also determines how a war is fought and gives purpose to the fighting and meaning to the sacrifices and risks inherent in all wars. Expansive war aims, sometimes necessary, will require a larger war, or a longer one, or perhaps a more virulent war. Using the wrong strategy given the circumstances and the enemy, and not recognizing the error, may lengthen a war unnecessarily or result in losing it all together. Limiting resources, although sometimes necessary, may also have the effect of lengthening a war. Policies relative to the enemy may also have consequential effects on actions taken on the battlefield. Government and military bureaucracies that cannot be brought into line to execute what is expected of them, as well as decision making processes that cannot yield timely and practical results or adapt sufficiently to war's dynamism, also affect how war is fought.

The strategic, war-waging dimension of war's conduct, in the end, is about using and risking lives. For nations waging war, those lives are of the citizens-who-become-soldiers.<sup>518</sup> Waging war is also about risking the lives of the innocent and risking the life of the political community. Even if a political community's life is not risked in the existential sense, poor war-waging performance can put it at risk in other important ways. For example, trust between the government and its citizens can erode, as could fiscal solvency.

On one hand, the strategic, war-waging dimension is far from new. Sun Tzu wrote on the strategic dimension of war around the fourth century B.C., and his work was first brought to the attention of the Western world by a Jesuit missionary to Peking whose

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<sup>518</sup> If war is waged by non-nation entities, those lives are members of that political, economic, religious, or other type of community that is waging war.

interpretation was published in France in 1772.<sup>519</sup> The study of waging war has been a matter of the science and art of war ever since. On the other hand, this dimension of war has been mostly omitted from just war theory. This omission, as this study shows, is at least partially based upon the mistaken view that the role and responsibility of senior political leaders are strongly differentiated from those of senior military leaders. The former have *jus ad bellum* responsibility; the latter, *jus in bello*. Perhaps such a role differentiation was not present when Sun Tzu wrote, or when Clausewitz wrote some 2,000 years later, for the sovereign and the general were often the same person. At least in present day democracies, however, the sovereign and the general are not the same. In fact, this study uses Samuel Huntington's *The Soldier and the State* to show how strongly role differentiation is established in American civil-military thinking. Huntington's theory involves a kind of a bargain: political leaders allow a degree of autonomy to military leaders in the conduct of war in exchange for an apolitical military. Such a bargain, Huntington suggests, best serves a democracy because it balances the need for having a competent military instrument with the requirement that the instrument remains under the control of civil leaders.

Huntington's bargain worked its way into the prevailing view of just war theory. It is at play, consciously or unconsciously, in the line that Walzer draws between the war itself, for which political leaders have responsibility, and the conduct of war, for which soldiers and military leaders have responsibility. It is at play, therefore, when Walzer follows the logic inherent in drawing the line restricting *jus in bello* primarily to soldiers and their leaders who do the fighting. This study has shown, however, that such strong

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<sup>519</sup> Sun Tzu, *The Art of War*, translator, Samuel B. Griffith (New York: Oxford University Press, 1963), p. ix.

role differentiation does not exist with respect to the realities of war's conduct at the strategic, war-waging level.

This study has shown that political leaders are the final decision authority with respect to the major elements of war-waging responsibilities—war aims, strategies, policies, and major campaigns. Both senior political and military leaders, however, share responsibility for conducting the complex and extensive dialogue-and-execution regime necessary to ensure decisions and actions, initial and subsequent, are as prudent as possible. Even as senior political leaders are primarily responsible for setting the climate and conditions for a proper war-waging dialogue, all participants, civilian and military, share responsibility for the quality of the dialogue-and-execution regime and its resultant decisions, initial and subsequent. Finally, both sets of senior leaders are responsible to make their respective bureaucracies work sufficiently well—individually and as a set—to attain the aims set, execute the decided upon strategies and policies, make available the resources necessary, and support the directed campaigns and military operations.

These responsibilities derive from the fact that senior political and military leaders, in addition to their responsibility to the innocent and to their political community, are responsible for using the lives of citizens-who-become-soldiers well. Even in war, governments retain their responsibility for their citizens. This responsibility is exercised through the military chain of command and captured well in the prevailing view's *jus in bello*'s tactical, war-fighting dimension. This responsibility is also exercised through a nation's decision making processes as well as its execution machinery, the bureaucracies associated with governmental departments or ministries and military headquarters.

The responsibility for war's conduct lies far beyond the battlefield and the tactical dimension of *jus in bello*. This responsibility is captured by the tri-partite tension of *jus in bello*'s strategic, war-waging dimension: (a) set war aims and make strategy, policy, and campaign decisions that increase the probability of being right, or at least less wrong than those one is fighting; then, (b) translate those decisions into action to achieve war aims at the least cost, in lives and resources, and least risk to one's political community and adapt aims, strategies, policies, and campaigns to the changing realities of war as they unfold; and (c) do all of the foregoing while observing the war convention, sustaining the war's legitimacy in the eyes of the political community, and maintaining proper subordination of the military to civilian leadership.

This study suggests five principles as those that can help guide senior political and military leaders in the execution of their war-waging responsibilities. They are the principles of continuous dialogue, final decision authority, managerial competency, war legitimacy, and resignation. These principles do not provide senior political and military leaders "answers" to the war-waging problems that they face. Nor can they act as "moral litmus paper" to identify which decision or action is just. As is the case with *jus in bello*'s tactical, war-fighting principles, these strategic, war-waging principles merely describe the framework within which those responsible must decide and act and the framework which judgments and assignment of moral blame or praise can be made. Identifying these principles and the associated set of responsibilities is a significant addition to just war theory.

Thus this study adds to the understanding of war's moral dimension. Walzer set out, in *Just and Unjust Wars*, to write a book of practical morality, a way in which those

responsible can explain and justify what they do on behalf of all of us, and a way the rest of us can analyze and judge what those responsible have done.<sup>520</sup> This study continues that work.

The work is not done, however. Clarifying who is responsible for what as well as what responsibilities are shared, and how, together, those responsibilities should be executed is a start point, not an end point. At least in the United States, many senior political and military leaders—and their staffs and subordinates—come to their positions mal-developed and ill-educated with respect to war-waging responsibilities. Both sets of leaders, in general, arrive at their war-waging positions believing, falsely, in one version or the other of Huntington's role differentiated model or Walzer's "line" between the war itself and its conduct. Such false beliefs make waging war even harder than it already is. Assuming an important war-waging position of responsibility with the wrong intellectual framework guarantees more difficulty than is necessary. It is as if one expects to do well playing soccer by outfitting oneself with hockey skates, stick, helmet, and pads. Some new forms of preparation, development, and education are required to un-learn what current conventional wisdom has taught about war's conduct at the strategic, war-waging level.

The need for a different approach to the preparation, development, and education emerges from a second source. Happily, war is an episodic event. The requirement to wage war is understood as a possibility by those who become senior political leaders. Unless a senior political leader comes to his or her position during a war, however, few if any who seek or are sought out to fill positions with war-waging responsibility see war as

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<sup>520</sup> Michael Walzer, *Just and Unjust Wars*, *op.cit.*, pp. xi-xvii.



a likelihood. Even those political leaders who assume their responsibilities in a war will rarely have “done it before.” More to the point, few senior military leaders have waged war either. Senior military leaders certainly do view waging war as what they must be prepared to do, but a close look at the ways these leaders develop in their career reveals that they are very well prepared to fight a war but not as completely prepared to wage one.

Among political leaders, the result is deference. Like Presidents Lincoln and Bush, a common and understandable reaction to war is to make some high level decisions but to “let the professional handle execution.” That is, follow what Cohen called “the normal theory,” and defer to military leadership. Perhaps this kind of approach might work with a quick war like the first Gulf War or the Panama operations to remove Noriega, but even in these kinds of cases, this study has shown more co-responsibility than deference in both the lead up to decisions as well as in execution. On the military side, the result is treating war as merely an aggregate of tactics. That is, treating waging war as a technical problem that changes in degree—fighting on a larger scale and wider scope—rather than a problem that changes in kind—the problem of waging war as an adaptive problem that is related to, but different from, fighting. Senior political leaders can’t just defer, and senior military leaders can’t just aggregate. Each set of leaders needs the skills and perspectives of the other; the political and military skills necessary to wage war are different from peacetime governing and from war-fighting. Again, some new forms of preparation, development, and education are required to un-learn was conventional wisdom has taught about war’s conduct at the strategic, war-waging level.

Justice in the conduct of war finds morally blameworthy those soldiers and leaders who fail in executing their tactical, war-fighting responsibilities. Certainly, such blame is carefully assigned, for all acknowledge the difficulty and complexity of making decisions and taking action in the actual conditions of combat—danger, fear, duress, and ambiguity. Moral blame remains necessary, however, if soldiers and leaders who fight are to remain moral agents and if their actions are to be distinguishable from mere butchery. Similarly, justice in the conduct of war must find morally blameworthy those senior political and military leaders who fail in executing their strategic, war-waging responsibilities. Again, such blame must be carefully assigned. Waging war is perhaps the most complex of human activities. War is waged with incomplete information, under pressure, and amid competing priorities. Furthermore, mistaken judgments are common in war, at the tactical and strategic levels. Yet, moral blame is necessary if lives are wasted or used unnecessarily, or if the innocent or political community are placed at unreasonable risk.

This study was written as the United States has withdrawn from a war in Iraq but is contemplating limited reengagement, completed an intervention in Libya, and is preparing to withdraw from a war in Afghanistan. War is far from over. The war against Al Qaeda and its affiliates continues as does an on-going argument over whether the U.S. and allies should intervene in Syria. This study was written also during a crisis concerning Russia's intervention into and annexation of Crimea as well as at least perceived threats to Eastern Ukraine and the Baltic countries. Further, it was written as North Korea continued its bellicose attitude threatening new forms of nuclear testing; Iran continues developing a nuclear capability; unrest remains in North Africa, the

Middle East, and Central Asia; and the concept of “cyber war” is being discussed. No one knows how any of these developments will unfold, nor can anyone anticipate other areas in which war’s head may emerge. America may be tired of war, but war does not yet seem to be tired of America.

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*Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983)

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## **CURRICULUM VITAE**

**James M. Dubik**

Lieutenant General

U.S. Army (Retired)

President/CEO

Dubik Associates, LLC

**Address:** 7218 Ludwood Court, Alexandria, Virginia 22306

**Birth:** Erie, Pennsylvania, December 6, 1949.

### **Education Background:**

1971 BA, Gannon University, Philosophy.

1981 MA, the Johns Hopkins University, Philosophy.

1990 MA, the Command and General Staff College, Fort Leavenworth, Kansas, Military Arts and Sciences.

1994 Massachusetts Institute of Technology, National Security Fellowship.

1997 Harvard JFK School of Government. Executive program, national security

2001 Maxwell School of Government, Syracuse University, Executive program, national security.

### **Academic Experience:**

1. Graduate level: instructor in military arts and sciences at the Army's School of Advanced Military Studies, Fort Leavenworth, Kansas—1991-92.
2. Undergraduate level: associate professor in ethics, ethics and leadership, history of philosophy, and political philosophy at the United States Military Academy, West Point, New York—1982-85.

3. Omar Bradley Chair for Strategic Leadership, 2012-13. Co sponsored by Dickenson College, Penn State Law School, and the US Army War College which involved teaching a course on just war theory at each institution.
4. Lecturer.
  - a. Adjunct faculty member at Georgetown University's Security Studies Program.
  - b. Lectured or been a panel member at the following academic institutions: University of Virginia, the Johns Hopkins University's School of Advanced International Study, University of Maryland, George Washington University, George Mason University, The Jefferson Education Society, the US Army School of Advanced Military Studies, the Army War College, and the National War College, Washington, D.C.

**Publications:** Published over 175 articles, essays, and monographs. The following are my major publications:

1. Books: *Envisioning Future Warfare*, coauthored with General Gordon R. Sullivan, (Fort Leavenworth, Kansas: US Command and General Staff College Press, 1995).
2. Selected monographs and essays.
  - a. "Human Rights, Command Responsibility, and Walzer's Just War Theory," Philosophy and Public Affairs, Fall, 1982.
  - b. "Social Expectations, Moral Obligations, and Command Responsibility," The International Journal of Applied Philosophy, Spring, 1984.
  - c. "On The Foundations of National Military Strategy: Past and Present," US Command and General Staff College, 1990.
  - d. "Grant's Final Campaign," US Command and General Staff College, 1991.
  - e. "Creating Combat Power in the 21<sup>st</sup> Century," The Institute of Land Warfare, 1996.
  - f. "Sacred Cows Make Good Shoes: Changing the Way We Think About Military Force Structure, The Institute of Land Warfare, 1997
  - g. "Building a Strategy Based Force Structure," The Institute of Land Warfare, 1999.
  - h. "The Army's 'Twofer': The Dual Role of the Interim Force," The Institute of Land Warfare, 2001.
  - i. "Lessons from Lincoln: On Being a War President," The Institute of Land Warfare, 2008.

- j. “Building Security Forces and Ministerial Capacity: Iraq as a Primer,” The Institute for the Study of War, 2009
  - k. “Accelerating Combat Power in Afghanistan,” The Institute for the Study of War, 2009.
  - l. “Creating Police and Law Enforcement Systems,” The Institute for the Study of War, 2010.
  - m. “The U.S. in Iraq Beyond 2011,” The Institute for the Study of War, 2011.
  - n. “Operational Art in Counterinsurgencies: A View from the Inside,” The Institute for the Study of War, 2012.
3. Introductions to two books.
- a. “Get On With It,” in Anthony D. McIvor, editor, *Rethinking the Principles of War* (Annapolis, Maryland: Naval Institute Press, 2005).
  - b. “Complex Contingency Operations: Assessing our Past and Preparing for our Future,” in Robert Perito, *Where is the Lone Ranger: America’s Search for a Stability Force* (Washington, D.C.: The U.S. Institute for Peace, 2013). Second edition.

### **Current portfolio.**

- 1. President and CEO, Dubik Associates, LLC. A consulting firm formed in 2008 with Sharon L. Basso. The firm consults on matters of national security issues; strategic planning—military, intelligence, government, and business; leader development; and media and Congressional relations.
- 2. Senior Fellow, the Institute of Land Warfare. I write regular articles in Army magazine, published by the Association of the United States Army. My last monograph is “Lessons from Lincoln, On Being a War President.” My latest articles is “Stating the Obvious and Pretending It’s Not,” June 2014. These and other essays and monographs are available on line at [www.ausa.org](http://www.ausa.org).
- 3. Senior Fellow, the Institute for the Study of War. I conduct research, write, brief, and conduct media interviews on behalf of the Institute in the following areas: ways to improve U.S. and allied training of indigenous security forces in Afghanistan, Iraq, and elsewhere; counterinsurgency doctrine; and changes in the nature, conduct, and understanding of war. Monographs published by the Institute include: “Building Security Forces and Ministerial Capacity: Iraq as a Primer.” “Accelerating Combat Power in Afghanistan,” “Creating Police and Law Enforcement Systems,” and “The U.S. in Iraq Beyond 2011.” My latest monograph is entitled, “Operational Art in Counterinsurgencies.” All are available at [www.understandingwar.org](http://www.understandingwar.org). Also available on the Institute’s web site are his most recent media interviews.

4. Chairman of the Board and Trustee of the National Leadership Roundtable on Church Management. I assist in developing long range strategic goals for this non-profit organization whose mission is to assist the Catholic Church in America in improving management and leadership practices. I also help the organization in translating strategic goals into measurable objectives and tasks, in constructing an efficient and effective organization, and aligning resources with the organization and strategic plan. A view of this organization can be found at [www.nlrcm.org](http://www.nlrcm.org).
5. Member, Council on Foreign Relations, Washington, DC.
6. Member, the National Security Advisory Council, U.S. Global Leadership Coalition, Washington, DC.
7. Member, U.S. Army Ranger Hall of Fame. Inducted in 2012.
8. Media. I have appeared, been interviewed by, or have written for the following media outlets: BBC, NPR, CNN, Fox, Washington Post, New York Times, Wall Street Journal, Christian Science Monitor, Foreign Policy, Politico, and a number of smaller news organizations.

**Executive leadership experiences**. Over 37 years of continuous active duty culminating in more than ten years of effective, values-based executive management and leadership. Proven change leader and strategic thinker. Practiced in successfully working with senior governmental, corporate, and military leaders of many nations—sometimes in very difficult and sensitive conditions. Exercised responsible stewardship of billions of dollars.

1. 2007-8. Commanding General, Multi-National Security Transition Command—Iraq and NATO Training Mission—Iraq. Baghdad, Iraq. Senior US official responsible for training and equipping the Iraqi military and police forces. \$5B annual budget. Coordinated with Iraqi, American, NATO, and other national senior governmental and military officials. Main innovation: accelerated growth—in size, capability, and confidence—of the Iraqi security forces—military, police, and Ministries of Defense and Interior—to meet US strategic objectives.
2. 2004-7. Commanding General, I US Corps. Fort Lewis, Washington. Senior American Army operational commander in the Pacific region. Responsible for training 40,000 soldiers for war as well as for developing or continuing military

relationships with Korea, Japan, and Thailand. \$600 M budget. Main innovations: created a global, distributed, peer-learning environment to accelerate learning among Stryker units in Hawaii, Alaska, Germany, Pennsylvania, and Washington State and began new family programs to reduce stress on spouses and children of deployed service members—both now being adopted throughout the army.

3. 2002-4. Commanding General, Joint Laboratory, Joint Forces Command, Norfolk, Virginia. Senior US military official responsible for the development and execution of US and multi-national experimentation that included France, Germany, Canada, Australia, and the U.K. \$110 M budget. Main innovations: Created two experimental areas—prototype experimentation to focus on near-term products and concept experimentation to provide insights into potential long-term security investments. Created and led a distributed, virtual, multi-service, and multi-national team to manage this program.
4. 2000-2. Commanding General, 25<sup>th</sup> Infantry Division and US Army Hawaii, Schofield Barracks, Hawaii. Senior US Army commander in the State of Hawaii responsible for training 15,000 soldiers for global contingency missions. \$ 300 M budget. Interacted with state governmental, business, environmental, and cultural leaders as well as senior US military commanders in Hawaii. Main innovation: negotiated in 2001-2 land use, land purchase, information architecture, and construction agreements necessary to field and train a Hawaiian Stryker Brigade in 2005-6. Model also used in Alaska, Germany, Washington, and Pennsylvania.
5. 1999-2000. Deputy Commanding General for Transformation, US Army Training and Doctrine Command, Fort Lewis, Washington. Senior leader responsible for creating the most technologically advanced combat unit in the US Army. Also developed accelerated learning and leader development methodologies as well as began the installation of a training and learning information infrastructure necessary for this program. \$1B budget. As the lead executive, personally reported to three army 4-stars and integrated supporting actions across the Army. Main innovation: setting all aspect of this project in place—equipment, training, management structures and procedures, and information architecture—in one year.
6. 1998-9. Deputy Commanding General, Multi-National Division (North), Bosnia-Herzegovina, Tuzla, Bosnia. Deputy commanding general responsible for the security of one-third of Bosnia-Herzegovina. Supervised the execution of operations and support of forces from six nations—Russia, Poland, Turkey, Sweden, Finland, and Denmark. Major innovation: seated the first post-war government in Srebrenica and implemented the Dayton Accords Agreement in the district of Brcko.

7. 1997-8. Director of Training, Headquarters Department of the Army, The Pentagon, Washington, DC. Senior Army executive responsible for the funding of all Army training world-wide. \$10B program. Major innovation: began the process of divesting the army from legacy training methods and investing in more advanced training and learning systems.

### **History of military assignments.**

- 1971 Platoon leader, recon platoon leader, company executive officer. 3 Bn, 325 Inf, 82D Airborne Division.
- 1973 S3, Air Operations Officer. 2<sup>nd</sup> Brigade, 82D Airborne Division
- 1975 Company executive officer, S5, Company Commander, S2, S1. 2<sup>nd</sup> Bn, 75 Infantry (Ranger)
- 1978 Student, USMC Amphibious Warfare School.
- 1979 Student, the Johns Hopkins University.
- 1981 Student, the US Army Command and General Staff College.
- 1982 Assistant Professor, Department of English (teaching Philosophy, Ethics, Just War Theory, Ethics and Leadership) the US Military Academy.
- 1985 Executive Officer, 1<sup>st</sup> Bn, 75 Infantry (Ranger)
- 1987 Inspector General, 25<sup>th</sup> Infantry Division
- 1988 Commander, 5<sup>th</sup> Battalion, 14<sup>th</sup> Infantry, 25<sup>th</sup> Infantry Division
- 1990 Student, the Advanced Operations Study Fellowship, School of Advanced Military Studies (SAMS)
- 1992 Special Assistant to the Chief of Staff and Vice Chief of Staff, U.S. Army
- 1994 Commander, 2<sup>nd</sup> Brigade, 10<sup>th</sup> Mountain Division. Commanded during Operation Uphold Democracy.
- 1996 Executive Officer to the Chief of Staff, U.S. Army.
- 1997 Director of Training, Department of the Army, Operations Division
- 1998 Assistant Division Commander, 1<sup>st</sup> Cavalry Division and Deputy Commanding General Task Force Eagle in Tuzla, Bosnia.



2000 Deputy Commanding General for Transformation, U.S. Training and Doctrine Command.

2001 Commanding General, 25<sup>th</sup> Infantry Division and US Army, Hawaii.

2003 Commander, Joint Experimental Division and J9, Joint Forces Command.

2005 Commanding General, 1<sup>st</sup> US Corps

2007 Commanding General, Multi-national Security Transition Command-Iraq. Responsible for accelerating the growth of the Iraqi Security Forces in size, capability, and confidence during the surge.

2008 Retired.

**Hobbies.** Exercise (have completed four ultra-marathons), biking, golf, guitar, reading, writing, and most of all playing with my seven grandchildren.